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CRP NO.1287 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 17 / 12 / 2025

ORDER PRONOUNCED ON : 06 / 01 / 2026

CORAM:

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

CRP NO.1287 OF 2023

AND

CMP NO.8653 OF 2023

Saraswathi

... Petitioner / Petitioner /
Plaintiff

Versus

1. Subramaniam
2. Dhandapani
Natrayasamy (Died)
3. N.Mallika Arjunan
4. N.Ponraj
5. P.Thangamani
6. Nachammal
7. Kanagaraj
8. Thiyagaraj
9. Rukkumani
10. Manoranjitham
11. Neelavathy

... Respondents / Respondents /
Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, 1950 praying to set aside the Order dated January 31, 2023 passed in I.A.No.772 of 2022 in O.S.No.96 of 2011 by the District Munsif, Udumalaipettai.

For Petitioner : Mr.R.Kannan

For Respondents 1, 3, 4,6 to 9 : Set *ex-parte* before Trial Court



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Respondent No.2 : Notice not served
For Respondent 5 : Mr.G.Ethirajulu
Respondents 10 and 11 : Served - No appearance

ORDER

Feeling aggrieved by the Dismissal Order dated January 31, 2023 passed by 'the District Munsif Court, Udumalaipettai' ['Trial Court' for brevity] in I.A.No.772 of 2022 in O.S.No.96 of 2011, the Petitioner therein has preferred this Civil Revision Petition under Article 227 of the Constitution of India, 1950.

2. The Revision Petitioner herein is the Plaintiff and the Respondents herein are the Defendants in the Original Suit in O.S.No.96 of 2011 on the file of the Trial Court. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

3. The Plaintiff filed the Suit for partition and other relief against the Defendants. In the plaint, it has been stated that the Plaintiff and the First Defendant are Sister and Brother born through the second wife of Malli Chettiar, who passed away about 23 years before the Suit. The third Defendant is the son of Malli Chettiar born through his first



wife. Malli Chettiar, Plaintiff, Defendants 1 and 3 were living jointly. The mother of the Plaintiff passed away 25 years before the Suit and Malli Chettiar passed away intestate in the year 1987 leaving the Plaintiff, Defendants 1 and 3 as his legal heirs / legal representatives to succeed his estate. The plaint further reads that the first Defendant is not married till date (as on the date of Suit). At the instance of the first Defendant, a family arrangement took place in the year 1990, in which, the Suit Properties were allotted to the share of the Plaintiff and first Defendant jointly while the other properties of Malli Chettiar were allotted to the third Defendant. The first Defendant was in actual possession and enjoyment of the property allotted to him and Plaintiff. The first Defendant was paying the Plaintiff's share amount periodically till the end of December 2009. Then, in the month of January 2011, when the Plaintiff approached the first Defendant for her share amount for the year 2010, the first Defendant started giving evasive answers. Later, in the month of January 2011, the Plaintiff came to know that the first Defendant had entered into Sale Agreement with the second Defendant for the sole purpose of defeating the valuable rights of the Plaintiff in the Suit Properties. Hence the Suit for partition and permanent injunction against the first Defendant.



4. When the Suit was posted for trial after filing of written statement by some of the Defendants, the Petitioner filed an Interlocutory Application under Order VI Rule 17 of 'the Code of Civil Procedure, 1908' ['CPC' for short] seeking to amend the plaint. The details of amendment sought to be made is hereunder:-

"DETAILS OF AMENDMENT"

1) *In para 3 of the plaint, "Who died about 23 years ago" has to be amended as "Who died about 70 years ago".*

2) *In para 7 of the plaint, "Mother of the plaintiff also died about 25 years ago" has to be amended as "Mother of the plaintiff also died about 47 years ago".*

3) *In para 7 of the plaint, "Malli Chettiar died intestate in the year 1987" has to be amended as "Malli Chettiar died intestate in the year 1950".*

4) *In para 9 of the plaint, "This being so in the year 1990" has to be amended as "This being so in the year 1987".*

5) *In para 13 of the plaint, "The properties described hereunder except the plaintiff" has to be amended as "The properties described herewith along with the plaintiff, 1st defendant, 3rd defendant, 7th defendant and one Subbammal".*

6) *After para 13, a new para has to be added as follows:*

"13(a). The plaintiff, late. Subbammal, Nachammal, late. Natrayasamy, Saraswathi are the sons and daughters through the 1st wife Ponammal, wife of Malli Chettiar. The 1st



defendant Subramaniam is the son of the second wife Mylathal. The 4th defendant Mallika Arjunan, the 5th defendant Ponraj are the sons of the deceased Natrayasamy. The 8th defendant Kanagaraj, 9th defendant Thiyagaraj, 10th defendant Rukmani, 11th defendant Manoranjitham and 12th defendant Neelavathy are the sons and daughters of late Subbammal. While the suit is pending the 1st defendant had sold one portion of the suit properties to the 6th defendant. So, the 6th defendant is added as a necessary party in the suit. The 6th defendant is the wife of the 4th defendant.

7)In para 18 of the plaint, in the prayer column, "Dividing the suit properties into two equal shares" has to be amended as "Dividing the suit properties into 5 equal shares and allot one such share to the plaintiff". "

5. The Trial Court after hearing both sides, dismissed the Interlocutory Application reasoning out that the amendment sought to be made by the Plaintiff would change the nature and cause of action of the Suit; that the Plaintiff cannot be permitted to fill up the *laches*; and that if the amendment is allowed, it would cause miscarriage of justice.

6. Feeling aggrieved by the dismissal, the Plaintiff has filed this Civil Revision Petition.

7. Mr. R. Kannan, learned Counsel appearing for the Revision Petitioner / Petitioner / Plaintiff submitted that though some of



the defendants have filed their written statement and the case has been posted for trial, the trial has not yet commenced. He further submitted that the amendments sought to be made by the plaintiff do not alter the nature and character of the Suit. On the other hand, the amendments are sought only to correct inadvertent typographical error in the year of death of the plaintiff's parents, and to further explain the relationship between the plaintiff and the other defendants, as well as to amend the share by restricting it to a lesser share than originally claimed. The Trial Court, without appreciating the facts, erred in dismissing the Interlocutory Application. Accordingly, he prayed to allow the Civil Revision Petition, set aside the Dismissal Order passed by the Trial Court in I.A.No.772 of 2022 and consequently allow the same.

8. Per contra, Mr.G.Ethirajulu, learned Counsel for the third and fifth Respondents contended that the amendments sought would change the nature and character of the Suit and it would cause delay in the proceedings. The plaintiff in the plaint has stated that her father - Malli Chettiar passed away 23 years before the date of Suit. Now she seeks to withdraw the said admission and incorporate that he passed away in the year 1950. The plaintiff was well aware of the relationship between herself and the defendants at the time of filing the plaint, however, she



wantonly failed to state the correct relationship. Hence, if the application seeking amendment is allowed, it would cause delay in the proceedings. Further, he pointed out that the Suit was filed in the year 2011 and till date, the trial has not yet commenced. Therefore, the Trial Court rightly dismissed the Interlocutory Application and there is no warrant for interference with the same. Accordingly, he prayed for dismissal of the Civil Revision Petition.

9. Heard on either side. Perused the plaint, affidavit filed in support of the Amendment Application, details of the amendments sought and other papers on record.

10. According to the Plaintiff, the amendments sought to be made are to correct inadvertent omissions and typographical errors. Amendment Nos. 1 to 3 relate to the year of demise of the Plaintiff's parents. Amendment No.4 is about the year in which the Defendant Nos.1 and 3 requested the Plaintiff for division of suit property. Amendment No.5 seeks to clarify that not only the Plaintiff and first Defendant but the Defendant Nos.3 and 7 and one Subbammal are also having right over the suit property. Amendment No.6 seeks to explain the relationship between the Plaintiff and the Defendants in detail. Vide Amendment No.7, the Plaintiff restricts her claim to 1/5 share in the suit property as against her



earlier claim of ½ share.

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11. As regards Amendment Nos.1 to 4, mere pleadings do not amount to proof. Whether Malli Chettiar passed away 23 years ago as stated in the plaint or 70 years ago as proposed in the amendment, and whether the wife of Malli Chettiar passed away 47 years ago or 25 years ago, *etc.*, are all questions of fact which have to be proved by the parties. Vide Amendment Nos.5 to 7, the Plaintiff ultimately seeks to restrict her claim in the suit property to 1/5 share. Upon perusing the amendments sought to be made and considering their implications, this Court is of the considered view that these amendments sought to be made are simple in nature and will not alter the character and nature of the Suit and will not cause prejudice to the Defendants. The Defendants can very well file additional written statement to counter the averments made by the Plaintiff vide the Amendments. Admittedly, the trial has not yet commenced. The Trial Court ought to have adopted a lenient approach, particularly since the amendment sought was a pre-trial amendment. In these circumstances, with a view to adhere to the principles of natural justice fully and in the interest of justice, this Court is inclined to allow the Civil Revision Petition.

12. In fine, this Civil Revision Petition is allowed and the



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Order dated January 31, 2023 passed in I.A.No.772 of 2022 in O.S.No.96 of 2011 is set aside and I.A.No.772 of 2022 is allowed. Considering the facts and circumstances, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

06 / 01 / 2026

(1/2)

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
TK

R. SAKTHIVEL, J.

TK

To

The District Munsif
Udumalpet.

PRE-DELIVERY ORDER MADE IN

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