



O.S.A.No.11 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P. DHANABAL

O.S.A.No.11 of 2025
and CMP No.1050 of 2025

1. R.Nandhini Devi
2. Bhavana
3. Raji Edwin, Minor
Rep. By her mother and
Natural Guardian – R.Nadhini Devi

... Appellants

Vs.

R.Santhanalakshmi [Deceased]

1. Raja Edwin
2. Karur Vysya Bank
St. Thomas Mount Branch,
Defence Officers Colony Road,
Chennai 600 016
Rep. By its Branch Manager



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3. Antony Thilip

4. Hari Prasath

5. K.Jayabalan

6. Selvi

7. Usha

... Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules and Clause 15 of the Letters Patent against the order and decree dated 08.04.2024 made in A.No.1307 of 2022 in CS No.137 of 2011.

For Appellant : Mr.T.T.Ravi Chandran

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

This Original Side Appeal is directed against the order of the learned Single Judge dated 08.04.2024 in allowing the A.No.1307 of 2022 in CS No.137 of 2011 to amend the plaint.

2.The appellants are the contesting defendants in the suit in C.S



No.137 of 2011. The first plaintiff in the suit is the mother of 1st appellant's husband and the second plaintiff is the first plaintiff's elder son. The suit is for recovery of possession of suit "A" schedule for transfer of suit "B" schedule in favour of 1st plaintiff and other reliefs. During pendency of suit, the 1st plaintiff died. Alleging that the 1st plaintiff had executed a Will in favour of 2nd plaintiff, he filed an application for amendment of plaint incorporating necessary plea on the basis of Will, to amend cause Will and other amendments which are predominantly additions correction necessitated on account of death of first plaintiff and alleged Will executed by first plaintiff in favour of second plaintiff. The learned Single Judge while allowing the petition for amendment is of the view that the amendment is necessitated in view of subsequent events and that the amendment should be allowed in the interest of justice.

3. Learned counsel for the appellant submitted that the amendment is sought for at the instance of a 3rd party, who had been impleaded. He contented that the learned Judge allowed the application for amendment without considering the objections raised by the appellants. Stating that the



cause of action itself arose only after the institution of the suit filed by the appellants and the suit itself is a counter blast to the suit filed by the appellant in CS No.386 of 2010, it is submitted that the learned Judge erred in allowing the application. The learned counsel submitted that the amendment introducing new prayer after the suit is listed for trial cannot be permitted. Yet another submission made by the learned counsel for the Appellants is that the plaintiff has now pleaded a Will, which is not yet probated and no relief can be claimed without the Will being probated. He further contended that the amendment is a clear abuse of process of law as the same will change the character of suit.

4. Heard the submission of the learned counsel for the appellants and the materials available on record.

5. It is true that the amendment was sought for in a suit filed in 2011. However, it is to be noted that the 1st plaintiff in the suit died. Consequently, the amendment is required primarily to refer to the Will stated to have been executed by the 1st plaintiff during her life time in favour of the second



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plaintiff. Since the Will alleged to have been executed by the 1st plaintiff would only take effect after her life time, amendment introducing the plea regarding the will executed by the 1st plaintiff cannot be faulted.

6. This Court is unable to find any change in the character of suit. There is no amendment to contradict the plea, which is already on record as per the original plaint. The Trial Court has exercised its discretion taking into account the facts and circumstances of the case and therefore, this Court does not find any reason to set-aside the same. This Court is also convinced that the amendment is required in consequent to the death of first plaintiff and the alleged Will which is in favour of 2nd plaintiff. Accordingly, this Original Side Appeal stands dismissed. No costs. It is left open to the appellants to file additional written statement within a period of two weeks from the date of receipt of a copy of this order. No costs.

(S.S.S.R., J.) (P.D.B., J.)
22.01.2025

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Internet : Yes/No
Index : Yes/No



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Neutral Citation : Yes /No

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and
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