

**IN THE COURT OF THE DISTRICT MUNSIF, SULUR**

Present : **Tmt.N.Renuga.**, B.A., B.L.,

District Munsif, Sulur

Friday the 19<sup>th</sup> day of July 2024

**I.A.No.8/2024**

**in**

**O.S.No.92/2020**

1. Sri.Murugan

2. Smt.Jayamani

... Petitioners/Plaintiffs

/VS/

Smt.Radhamani

...Respondent/Defendant

This petition is coming on 15.07.2024 for final hearing before me in the presence of Ms.R.Krishnaveni, Advocate for the Petitioners and Thiru.T.Muralidharan, Advocate for the Respondent and upon perusing the records, and this court made the following:

**ORDER**

This petition filed by the petitioners under order 6 rule 16 and 17 and section 151 of CPC to amend the plaint.

**1. The brief averments of the affidavit filed by the petitioners as follows:**

1.1. The 2<sup>nd</sup> petitioner is 1<sup>st</sup> petitioner's wife and the petitioners/plaintiffs have filed the suit for permanent injunction against the respondent/defendant.

1.2. The suit properties originally belonged to the respondent's family by virtue of sale deed dated 19.11.2003 and the same was purchased by 1<sup>st</sup> petitioner by virtue of sale deed dated 28.06.2006 with the same measurements within the specific boundaries. The house was dilapidated, the 1<sup>st</sup> petitioner had put up constructions in his house but the same was stopped by the respondent.

1.3. The respondent had put up constructions in the 1<sup>st</sup> week of December

2021 and claimed that 1<sup>st</sup> petitioner's southern side wall running East West belongs to him. As per the measurements in 1<sup>st</sup> petitioner sale deed, that wall absolutely belongs to 1<sup>st</sup> petitioner. Even from the Commissioner's report and plan and surveyor's plan, it is well within 1<sup>st</sup> petitioner boundary. On the western side wall running North South, the respondent at the South West had encroached about  $\frac{3}{4}$  ft (North South) at the bathroom attached to this wall. Further on the Southern side of the East West, the respondent had rested their roofings. The encroachments made by the respondent had come to knowledge only after the measurements made by the Advocate Commissioner with the assistance of the Taluk Surveyor.

1.4. After the measurement of the suit property, i.e., on 31.12.2021, the 1<sup>st</sup> petitioner had even requested the respondent to remove the encroachments and deliver the possession of the encroached property. But the respondent had not cared about the same. On the other hand, the respondent started to proclaim that he is the absolute owner of the Southern wall running East West of ft. in width and 20 ft in length. Hence, it is necessary to amend the plaint, seeking the relief of declaration and mandatory injunction for removal of the encroachment and the roofings rested on 1<sup>st</sup> petitioner Southern side wall running East West to avoid multiplicity of proceedings. Hence, the 1<sup>st</sup> petitioner filed this petition to amend the plaint. Hence, the petition.

## **2. The brief averments of Counter statement filed by the Respondent as follows:**

2.1. The petition is false, frivolous, vexatious and unsustainable in law and facts. The suit description is wrong, the plaintiff alone have to prove the existence of property as described in the suit schedule. The plaintiff and his predecessors has no way entitled to the measurements mentioned in the description of property. The suit property is an vacant land. As per the patta produced by the plaintiff in document No.4 the pattadharas are Ramamoorthy son of Narayanasamy, Gurusamy son of Rangasamy, Jeyaprakash son of Alagiri, Dhanamani wife of Balusamy, Murugan, Jeyamani are all joint pattadharars hence, the plaintiff allow not absolute owner of the

suit property.

2.2. The description of property mutually inconsistency with the patta and the document as relied by the plaintiff. Hence, the plaintiff not entitled to the prayer as claimed in the suit. The East West Northern side wall are the defendant's property is absolutely belongs to this defendant and constructed by this defendant. Hence, the petitioners filed this petition without any cause of action. The Advocate Commissioner report and Surveyor report has wrongly mentioned the boundaries. This defendant has not encroached  $\frac{3}{4}$  feet as stated by the petitioner in the affidavit. This defendant has not made encroachment.

2.3. Further on 31.12.2021 the plaintiff never approached this defendant and requested to remove the encroachment. The facts are all invented by the plaintiff for the purpose of this petition. This proposed amendment is barred by limitation. Hence, this petition to be dismissed.

### **3. Points for Consideration:-**

Whether the petition under order 6 rule 16 and 17 of CPC to is to be allowed?

### **4. Points:-**

4.1. Heard the counsels for both the parties. Records perused. The main suit is filed by the plaintiffs for permanent injunction. The written statement was filed by the defendant on 22.02.2022 by denying the right of the plaintiff over East West wall situated on the Southern side of suit property. The Advocate Commissioner is filed his report on 22.02.2022 and this present petition filed by the plaintiff to amend the suit prayer for declaration and mandatory injunction in respect of East West wall situated on the Southern side of suit property and to remove the encroachment made by the defendant.

4.2. The petitioner filed this amendment application within limitation of three years, after filing of written statement. Further as per order 6 rule 17 of CPC any pre-trial amendment can be construed liberally. The plaintiff alone having burden to

prove the entire facts alleged in the plaint. Hence, in the interest of justice this petition is allowed.

***In the result, this petition is allowed. No cost.***

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 19<sup>th</sup> day of July 2024.

Sd/N.Renuga  
District Munsif,  
Sulur.

**List of witnesses and documents on petitioners side:-**

Nil

**List of witnesses and documents on Respondent side:-**

Nil

Sd/N.Renuga  
District Munsif,  
Sulur.

Draft/ Fair Order  
I.A.No.8/2024 in  
O.S.No.92/2020  
Dated: 19.07.2024  
DMC, Sulur