

IN THE COURT OF THE DISTRICT MUNSIF, SULURPresent : **Tmt.N.Renuga.**, B.A., B.L.,

District Munsif, Sulur

Monday the 20th day of January 2025**I.A.No.6/2024 in O.S.No.105/2020**

1. Balasubramaniam

2. Sakthivel

... Petitioners/Plaintiffs

/VS/

Devaki

...Respondent/Defendant

This petition is coming on 03.01.2025 for final hearing before me in the presence of Mr.A.Chinnasamy, Advocate for the Petitioners and Mr.E.Gopalakrishnan, Advocate for the Respondent and upon perusing the records, and this court made the following:

ORDER

This petition filed by the petitioner under order 6 rule 17 of CPC to amend the plaint.

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

1.1. The 1st petitioner is the deponent herein. The 1st petitioner aware of the facts of the case. He filed this affidavit on his behalf and on behalf of 2nd petitioner also. The petitioners have filed the above suit for permanent injunction from anyway obstructing are enjoyment of the suit cart track.

1.2. At the time of filing of the suit, the petitioners had claimed the width of the North South cart track as about 25 feet. In all the registered documents it has been mentioned as the cart track was provided for taking carts and all other kinds of vehicles. At the time of preparing the suit for trial, the 1st petitioner came to know that the suit cart track was separately sub divided as S.F.No.379/3A to the width of 12 feet under the land records updating scheme as per the actual enjoyment. Subsequent to the sub division proceedings become final, the respondent with her

influence in the revenue officials cancelled the sub division without any notice or enquiry. The alleged cancellation of the sub division is void one.

1.3. In the plaint even though the petitioners had claimed the width of the cart track as 25 feet, the petitioners are restricting their claim to the width of 12 feet and thereby the petitioners are claiming lesser extent of cart track than mentioned in the original plaint. The proposed amendment will not in anyway alter the scope of the suit or introduce any new cause of action. The proposed amendment is a bonafied one. 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 petitioners who were not able to establish the alleged cause of action of the main suit, now has come forward with the present petition to fill up the lacuna in their case. The present petition has emerged only after the inspection and visit made by the advocate commissioner along with the taluk surveyor. The present petition is nothing but a broad daylight attempt to suppress the real facts existed at the time of filing the suit and to misguide this Hon'ble court with a malafide intention to achieve their hidden agenda. The several standing trees on the suit properties very particularly in the area alleged to be a cart tract, and noted down by the advocate commissioner in his report will clearly depict the physical feature of the suit properties.

2.2. The petitioners has filed the above suit against this respondent for the bare relief of permanent injunction and for cost. At the time of filing the suit the petitioner has filed application in IA.No.2/2020 to appoint an advocate commissioner to inspect the suit property and to file a report with plan by noting down the physical features. As per order of this Hon'ble court the learned advocate commissioner inspected the suit property after complying the necessary directions in this regard and filed his report very long back on 24.08.2022. The learned advocate commissioner categorically stated that in para 5 of his report that “பிரதிவாதியின் பூமியின் மேல்கோடு அறுதியில் தென்வடலாக நடந்து சென்ற தடமோ, வண்டி

வாகனங்கள் சென்றதற்கான அறிகுறி எதுவும் தென்படவில்லை.” The facts being so the petitioner, has directly admitted that he has filed the main suit on the presumptions and assumptions and without any valid ground or cause of action.

2.3. Neither in Advocate Commissioner’s report, nor photos or Surveyor plan show mark of any cart track to reach petitioner’s property, in such circumstance the petitioner filed this application to amend the plaint with respect to cart track by 12 feet is not maintainable. The very amendment will alter the very basic structure of the plaint. It is pertinent to note that the petitioners have not sought for the relief of declaration in the suit. The respondent had purchased the entire extend of 2.06 acres from one Mr.Maran for proper and valid sale consideration and from the date of purchase respondent herein as absolute owner cultivating dry agriculture crops like cholam, maize, ground nut, fodder etc and she has been in possession, occupation and enjoyment of her property without any hindrance.

2.4. From 24.08.2022 to 04.03.2024 the petitioner has not taken any valid steps to progress the suit and when the suit was posted for trial in list this petitioner immediately come up with a petition in IA.No.5/2024 to amend the plaint and again he has come up with this vexatious petition to drag on the proceedings endlessly. The petitioner does not have any valid title or possession of the so called 12 feet cart track at any point of time, which are in peaceful possession and enjoyment of the respondent for several years. There is no merit in the application seeking amendments as it is total deviation from the main suit and nothing but an attempt to create some cloud over the title of this respondent to her properties. The application is liable to dismissed both on facts and law.

3. Points for Consideration:-

Whether the petition under order 6 rule 17 of CPC to amend the plaint is to be allowed?

4. Points:-

4.1. Heard the counsels for both the parties. The main suit is filed for permanent injunction. Now the petitioners/plaintiffs filed this petition to amend the

plaint that the plaintiffs in the plaint had claimed the width of the cart track as 25 feet, the petitioners/plaintiffs are restricting their claim to the width of 12 feet and thereby the petitioners/plaintiffs are claiming lesser extent of cart track than mentioned in the original plaint. The main case is in the stage of trial in list.

4.2. The respondent/defendant contended in her counter that the petitioners/plaintiffs does not have any valid title or possession of the 12 feet cart track at any point of time, which are in peaceful possession and enjoyment of the respondent/defendant for several years. As per Order 6 Rule 17 of CPC, the pre trial amendment to be construed as liberally and the plaint can be allowed to amend. 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 20th January 2025.

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.6/2024 in
O.S.No.105/2020
Dated: 20.01.2025
DMC, Sulur