

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

Present : Tmt.M.Santhosham., B.Sc., B.L.,

District Munsif, Sulur

Thiruvalluvar year 2056 Visvavasu year, 19th day of Month of Aani

Thursday the 3rd day of July 2025

I.A.No.7/2024

in

O.S.No.93/2019

1. L.Palanisamy
2. K.Parvathi
3. M.Janaki
4. Ragupathi

... Petitioners/Plaintiffs

/VS/

1. R.Thirumurthy
2. R.Sivakumar
3. A.S.Pongodi
4. T.Latha

...Respondents/Defendants

This petition is coming on this day for final hearing before me in the presence of Mr.R.Viswanathan, Advocate for the Petitioners and Mr.A.Chinnasamy, Advocate for the Respondents and upon perusing the records, and this court made the following:

ORDER

This petition filed by the petitioners under order 6 rule 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 petitioners have filed the main suit for permanent injunction restraining against the respondents. The suit properties originally belonged to one

Ramasamy gounder and he died on 20.11.2009 leaving behind his wife Subbulakshmi and the 2nd to 4th petitioners/ plaintiffs and another daughter Jeevarathinam as his heirs to succeed his estate. After demise of Ramasamy gounder his heirs entered partition deed on 25.05.2017. As per the partition deed the petitioners enjoying their respective shares. The 5th plaintiff sold an extent of 20 cents to 1st petitioner/ plaintiff.

1.2. Originally the suit property consist an extent of 84 cents. As per partition the properties allotted to 2nd petitioner/ plaintiff is in 4th Item of 'B' schedule to an extent of 22 ½ cents and the share allotted to 3rd petitioner/ plaintiff is in 2nd item of 'C' schedule to an extent of 22.00 cents and the share allotted to 4th petitioner/ plaintiff is in 3rd item of 'E' schedule to an extent of 22.50 cents respectively. The balance extent 16.75 cents was allotted to cart track for the shares convenient and it starts from North-West and slopes to East an extent of 146 and turns to south an extent 256 ft length and it again turns to West an extent 114 ft length. The said property lies in survey number 60 and now it is sub divided as 60/1A. Immediate to the west of suit property "ஓடை வாரி" which lies in survey filed no.59. The said "ஓடை வாரி" starts from Kaniyur border and runs nearer to the different survey fields and ends with Noyal River. The 1st and 2nd respondents/ defendants are siblings. The 3rd respondent is wife of 2nd respondent and 1st respondent is husband of 4th respondent. The 3rd and 4th respondents having properties lies in survey number 58 of Karavali Mathapur village. The adjacent land owners of survey No.58 usually get access to reach their property in the "ஓடை வாரி".

1.3. The petitioners fenced the property. On 16.06.2019 the respondents unlawfully entered into the suit property and caused damages to fence stone and after noticing the same the petitioners rushed to the police and preferred a complaint and after receipt of complaint the police visited the suit property and cautioned the respondents. The respondents even without complying the warning once again caused damages to the fence stone of the suit property. At the time of filing the suit

inadvertently omitted to claim damage of the property. The worth of the damaged property comes around Rs.89235/-. The respondents has an obligation to compensate the damage caused by them. The said fact has to be added in the plaint pleadings and the plaint has to be amended accordingly. Hence, the petition is to be allowed.

2. The brief averments of Counter statement filed by the 1st Respondent and adopted by 2nd to 4th Respondents as follows:

2.1. The petition is false, frivolous, vexatious and not maintainable both under law and on the facts of the case. The respondents denies the entire allegation made in the petitioner's affidavit and put the petitioners to the strict proof of each and every one of the same. It is true that immediate to the west of the suit property Odai Vaari situates, which lies in S.F.No.59. The allegation that on the west of the lands runs Odai Vaari is true and the water course starts from Kaniyur Road. During the rainy season Rain water runs from 100 acres of lands only through the said Odai from North to south. The respondents are having lands in S.F.No.58 of Karavali Madhapur village.

2.2. On the North of the suit property there was a layout named "NERAIVANDAM CITY" which is a approved layout. While converting the lands as house sites they had laid North South Road adjoining to the Odai. The petitioners land situates on the south of the NERAIVANDAM CITY layout. The western side of the layout road ends near the petitioners land in S.F.No.60/1A. The respondents lands situates on the west of the petitioners lands. The respondents predecessor in title are enjoying the said Layout Road to reach their lands.

2.3. On 16.06.2019 the respondents unlawfully entered into the suit property and caused damages to the fence stone and after noticing the same the petitioners rushed to the police and preferred a complaint and after receipt of complaint the police visited the suit property and cautioned the respondents are all

false and incorrect one. The respondents even without complying the warning once again caused damages to the fence stone of the suit property are all false. The petitioners had omitted to claim damage of the property and the worth of the damaged property comes around Rs.89,235/- are all false and incorrect one. The proposed amendment sought by the petitioners is hopelessly barred by limitation. The date of the alleged damages caused to the fence stone was made on 16.06.2019 and after completion of 6 years, the petition filed by the petitioner for claiming damages is hopelessly barred by Limitation. Hence, the petitioner is to be dismissed.

3. No Witnesses were examined on either side, and no documents were marked as exhibits.

4. Points for Consideration:-

Whether the petition under order 6 rule 17 and section 151 of CPC to amend the plaint is to be allowed?

5. Points :-

5.1. The petition affidavit, counter and the enquiry of both parties were carefully considered. Heard the counsels for both the parties. The suit documents were carefully examined. The main suit is filed for permanent injunction. Now the petitioners/plaintiffs filed this petition to amend the plaint for to add the prayer for *“Directing the defendants to pay a sum of Rs.89,325/- with interest @ 12% P.A from the date of amendment to till realization of the amount”*. The main case is in the stage of trial in list.

5.2. The respondent has objected to the petition stating that the alleged damage mentioned by the petitioner occurred on 16.06.2019, and since six years have now passed, the claim made in the petition is barred by the law of limitation.

5.3. However, whether the alleged damage is indeed barred by limitation can be determined only through the evidence and documents presented by both sides. The question of whether the damage is barred by limitation is a mixed question of law and fact. Therefore, the court decides that this issue will be resolved at the final stage of the trial in the original suit. As per Order 6 Rule 17 of CPC, the pre trial amendment to be construed as liberally and the plaintiff can be allowed to amend. The respondents/ defendants would be entitled to file additional written statement, upon filing of the amendment plaint by the plaintiffs. Accordingly, the petition is allowed and ordered.

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 3rd day of July 2025.

Sd/M.Santhosham
District Munsif,
Sulur.

List of witnesses and documents on petitioners side:-

Nil

List of witnesses and documents on Respondent side:-

Nil

Sd/M.Santhosham
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.7/2024 in
O.S.No.93/2019
Dated:03.07.2025
DMC, Sulur