

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

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

**District Munsif, Sulur**

Thiruvalluvar year 2056 Visvavasu year, 15<sup>th</sup> day of Month of Aadi

Thursday the 31<sup>st</sup> day of July 2025

**I.A.No.13/2025**

**in**

**O.S.No.1003/2017**

A. Krishnasamy

**... Petitioner/Plaintiff**

**/VS/**

1. P. Palanisamy

2.P. Eswaran

3.P. Manisankar

4. Ponnarasi

**...Respondents/Defendants**

This Petition is coming for final hearing before me in the presence of Mr.V.Raveendran, Advocate for the Petitioner and Mr.K.Shanmuganathan, Advocate for the Respondents and upon perusing the records, and this court made the following:

**ORDER**

This Petition filed by the Petitioner under order 6 rule 17 and section 151 of CPC to amend the plaint.

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

1.1. The Respondent/Defendant has filed the written statement in which he disputed the existence of the "Nilaviyal Oodai" in East-West manner for 5.8mts in the S.F.No.89/1, situated immediately on the north of East-West cart track for the width of 2.4mts. Further the Respondent creating cloud over the said Oodai. Further the Respondent is attempting to encroach the said Oodai and also attempting to

convert the same into cart-track. Hence it is just and necessary to amend the plaint for the relief of declaration, that the said “Nilaviyal Oodai” is situated in the Plaintiff property in S.F.No.89/1.

1.2. The Commissioner visited and measured the suit property with the Assistance of Surveyor and filed his Report. In the said Report also the learned Commissioner and Surveyor absolutely failed to disclose that the “Nilaviyal Oodai” is situated for the width of 5.8mts in East-West manner in S.F.No.89/1. Hence it is just and necessary to amend the plaint for the relief of declaration. If the suit is tried without amending the plaint, the Petitioner/Plaintiff will not able to establish the existence of the “Nilaviyal Oodai” in his exclusive property and his title, possession and enjoyment over the same.

1.3. The above said proposed amendment will not alter the subject matter and nature of the suit in any manner. The Respondent will not be prejudiced by way of proposed amendment. The Petitioner have already filed an application in IA.No.10/2024 by seeking permission to amend the plaint. In the above application unfortunately the Petitioner have quated the section 25(d) instead of 25(b) and the value of the property by oversight mistake. Hence the Petitioner have not pressed the above application and come forward with the fresh instant application. Hence, this Petition is to be allowed.

**2. The brief averments of Counter statement filed by the 1<sup>st</sup> Respondent and adopted by 2<sup>nd</sup> to 4<sup>th</sup> 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 Petitioner to the strict proof of each and every one of the same. The Petitioner filed application under Order 26 Rule 9 of CPC to appoint the same Advocate Commissioner to revisit the suit property and note

down the physical features and to measure the suit properties along with Assistance of Taluk Surveyor on 19.09.2023 and the same was taken of file of this court in IA.No.6/2023 and the Respondents filed their counter statement on 12.10.2023.

2.2. The Petitioner without filing any objections for the Commissioner Report filed by the Commissioner in I.A.No.858/2017 filed the above application. Subsequent to the hearing of argument put forth by both sides, the said application filed by the Petitioner in I.A.No.6/2023 was dismiss on 02.03.2024. Subsequent to the dismissal of the said application, the Petitioner did not go for revision as against the dismissal order in I.A.No.6/2023. The Petitioner trying to create some sort of evidence by filing this application under Order 6 Rule 17 of CPC.

2.3. The Petitioner came forward with this application Under Order 6 Rule 17 to amend Para 11, details of valuation and prayers in the plaint are incorrect and not maintainable. As per the partition deed dated 18.06.1979 executed between the father of the Petitioner i.e., Aayi gounder, father of the Respondents No.1 and 2 i.e. Ponnusamy Gounder and their brothers, it is very clear that there is a existence of mamool cart track on the Northern side of the A, B and F sharers as follows:

“A, B and F பாகஸ்தர்களது சாலையிடங்களுக்கு வடபுற ஓரமாக தற்போது செல்லும் மாமூல் வண்டித்தடத்தில் வசிதியாக சென்றுவர வேண்டியது”

2.4. The Petition filed by the Petitioner is nothing but an afterthought. The cause of action averred in the suit filed by the Plaintiff in para11 of the plaint are as follows:

“27.02.2015 தேதி பிரதிவாதிகள் தாவா சொத்தின் வாய்க்காலை ஆக்கிரமிப்பு செய்து தொடர்ந்து தாவா சொத்தினன் சுவாதீனம் வாதியிடம் இருந்த தேதியில் மேற்படி சுவாதீனத்தில் பிரதிவாதிகள் தொந்தரவு செய்த தேதியிலும் தாவா சொத்து இந்நீதிமன்ற அதிகார எல்லைக்குட்பட்டது”

2.5. The Plaintiff nowhere whispered about the “Nilaviyal Oodai” without admitting the case of the Petitioner, even if the Respondents considered that there was a “Nilaviyal Oodai”, according to the version of the Petitioner, cause of action aroused to file the plaint on 27.02.2015. Now the Petitioner filed this application on 18.06.2024 i.e., after lapse of 9 years to seek relief of declaration, that to after lapse of statutory period of limitation after 3 years for seeking relief of declaration which is not permissible by law and maintainable. In the details of amendment filed by the Petitioner in the above application, the Petitioner conveniently suppressed the real facts and cunningly blamed the Revenue Officials, as that they have wrongly subdivided the Nilaviyal Oodai. Cart track as S.F.No.89/1 instead of subdividing it separately. The Revenue Officials have not made any mistakes as aforesaid by the Petitioner. Whereas if it is true the Petitioner should take steps to rectify the same, but the Petitioner did not do so and also not filed any documentary evidence to substantiate the same.

2.6. Filing this amendment Petition to amend the fundamental structure of the suit is maintainable and the Petitioner knew well about the same has been filed the Petitioner to drag the case. The Petitioner/Plaintiff now want to change the cause of action after lapse of limitation. Whatever the pleadings put forth by the Petitioner/Plaintiff in 11A, change in details of valuation, prayer and description of property are cannot be considered for the reason on that according to his own version and denial of “Nilaviyal Oodai” in the written statement filed by the Respondents/Defendants are as early as on 26.09.2018 from that date of the Petitioner/Plaintiff would have filed the Petition for amendment within 3 years from the date of initiation of suit. But the Petitioner did not do so and filed this application after lapse of 6 years. Therefore, the Petition is liable to be rejected as barred by limitation as per the pleadings.

2.7. The claim of amendment for the extent mentioned in the application how the Petitioner arrived the calculation and the Petitioner did not produced any document and without production of any documents. 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 Declaration and amend the plaint schedule of property and to amend the details of valuation in plaint. The main case is in the stage of trial in list.

5.2. The respondent has objected to the petition stating that the alleged denial of “Nilaviyal Oodai” in the written statement filed by the Respondents/Defendants are as early as on 26.09.2018 from that date of the Petitioner/Plaintiff would have filed the Petition for amendment within 3 years from the date of initiation of suit. The claim made in the petition is barred by the law of limitation.

5.3. However, whether the alleged amendment is barred by limitation can be determined only through the evidence and documents presented by both sides.

The question of whether the amendment is barred by limitation is a mixed question of law and fact. Therefore, the court decides that this issue will be resolved at the time of Judgment. 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. The Respondents/Defendants would be entitled to file additional written statement, upon filing of the amendment plaint by the plaintiff. 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 31<sup>st</sup> day of July 2025

Sd/M.Santhosham  
**District Munsif,**  
**Sulur.**

**List of witnesses and documents on Petitioner side:-** - Nil

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

Sd/M.Santhosham  
**District Munsif,**  
**Sulur.**

Draft/ Fair Order  
 I.A.No.13/2025 in  
 O.S.No.1003/2017  
 Dated:31.07.2025  
 DMC, Sulur