

**IN THE COURT OF PRINCIPAL DISTRICT MUNSIF, CHIDAMBARAM**

PRESENT: Tmt. S.SUGANIYA SRI B.A.B.L (Hons), M.L., PGDAML

**PRINCIPAL DISTRICT MUNSIF, CHIDAMBARAM (FAC)**

MONDAY, THE 24<sup>th</sup> DAY OF JUNE 2024

**IA.NO. 326/2023 IN OS.NO. 177/2016**

Thavaguru

.....Petitioner/ Plaintiff

/Vs/

Thanusu @ Balakrishnan

.....Respondent/Defendant

|                |                                                                                                                                                                                                                                                               |
|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For Petitioner | Thiru.R.Rajavelan, Advocate                                                                                                                                                                                                                                   |
| For Respondent | Thiru.K.Ramadoss, Advocate                                                                                                                                                                                                                                    |
| Relief Claimed | Petition filed under Order 6 Rule 17 of CPC to amend the plaint with regard to cause title for the purpose of determining the real questions in controversy between the parties and to dispose of the suit in accordance with law in the interest of justice. |
| Final Hearing  | 16.06.2024.                                                                                                                                                                                                                                                   |

Upon hearing the petitioner and respondent and on perusal of the entire records and having stood over for consideration till this day, this court delivers the following

**ORDER**

**The case of petitioner:**

1. The petitioner herein is the plaintiff in suit. The petitioner has filed the main suit against the respondent for permanent injunction by restraining him from putting up any sort of construction in the suit property and for mandatory injunction directing him to remove and demolish the construction put up by him and the hut in the suit property. The respondent is resisting the suit by means of written statement. The respondent has denied plaintiff's title to the suit property by contenting that he had purchased the suit schedule property from Munusamy Nadar and his wife Mahalakshmi through a registered sale deed dated: 11.03.1996 and that he is in possession and enjoyment of the property as an ab-

solute owner and therefore petitioner has no title over the property. In view of the defense taken, the petitioner was advised to amend the plaint to include the prayer for declaration of title and consequential relief over the suit schedule property. The proposed amendment will not alter or change the nature of suit and the cause of action pleaded. Neither new plea nor inconsistent plea is introduced. The petitioner has filed the suit as a hereditary trustee as will be evident from the averments mentioned in the plaint. However, due to mistake and oversight, the capacity of hereditary trustee of the trust has been omitted to be mentioned in the short and long cause of the plaint and as such the plaint needs to be amended accordingly. It is therefore just and necessary to amend up plaint as detailed in accompanying petition for the purposes of determining the real questions in controversy between the parties and to dispose of the suit in accordance with law in the interest of justice. Hence, this petition.

**The case of the Respondents:**

2. The petition filed by the petitioner is false, vexatious, and not maintainable and is liable to be dismissed with cost. The petition as framed is not legally maintainable. The suit was filed in 2016. The petitioner filed the suit in his independent capacity. Now he wants to change the cause title as hereditary trustee 'Masimaham Arakattalai' of Govindaraj temple at Pinnathur village, Chidambaram Taluk. A valuable right is accrued to this respondent. If the petition is allowed, great prejudice will be caused to this respondent. Further petitioner wants a relief of declaration of title and for recovery of possession. Respondent has denied the title of the petitioner. Hence by way of abundant caution, the petitioner ought to have taken steps within 3 years. Hence the petition is barred by law of limitation. The court fee paid is wrong and incorrect. The market value of property as per guideline value is Rs.200 per sq.ft. Which comes to Rs.8,75,000. The respondent has put up a RCC terraced building by spending more than Rs.20,00,000/-. But petitioner has valued the property at Rs.54,000/-. On what basis the petitioner fixed the market value at Rs.54,000/- is

not known. This petition is filed belatedly. It is settled law that the grant of application, for amendment be subject to certain conditions namely, (i) When the nature of it is changed permitting the amendment, (ii) when the amendment would result in introducing new cause of action and intends to prejudice to the other party, (iii) When the allowing amendment application defeats the law of limitation. The affidavit allegations are vague, bald, wrong and incorrect just to protract the litigation petitioner has come forward with this belated petition. If the petition is allowed, it will change the character of suit and cause of action and great prejudice will be caused to this respondent. Therefore, the respondent prays that the petition may be dismissed with cost.

3. Now the point for consideration is whether the petitioner is entitled to get the relief as prayed for?

4. On the side of petitioner, Ex.P1 to P4 was marked. On the side of respondent Ex.R1 was marked. No oral evidences on both sides.

**Points for consideration:**

5. Heard the both sides learned counsel. Material records perused. This is the suit filed for the relief of permanent injunction restraining the defendant as not to put up any construction in suit property and also for mandatory injunction directing the defendant to remove or demolish the construction and handover the vacant possession of suit property to plaintiff. This is the amendment petition filed to amend the plaint with regard to cause title and relief sought for. According to the petitioner, the respondent is resisting the suit by means of written statement and in which he has denied plaintiff's title to the suit property by contenting that he had purchased the suit schedule property from Munusamy Nadar and his wife Mahalakshmi through a registered sale deed dated: 11.03.1996 and that he is in possession and enjoyment of the property as an absolute owner and therefore petitioner has no title over the property. In view of the defense taken, the petitioner was advised to amend the plaint to include the prayer for declaration of title and consequential relief over the suit schedule property. The proposed amend-

ment will not alter or change the nature of suit and the cause of action pleaded. Neither new plea nor inconsistent plea is introduced. The petitioner has filed the suit as a hereditary trustee as will be evident from the averments mentioned in the plaint. However, due to mistake and oversight, the capacity of hereditary trustee of the trust has been omitted to be mentioned in the short and long cause of the plaint and as such the plaint needs to be amended accordingly. It is therefore just and necessary to amend up plaint as detailed in accompanying petition for the purposes of determining the real questions in controversy between the parties and to dispose of the suit in accordance with law in the interest of justice.

6. On the other hand, the respondent contends that the petition as framed is not legally maintainable. The suit was filed in 2016. The petitioner filed the suit in his independent capacity. Now he wants to change the cause title as hereditary trustee 'Masimaham Arakattalai' of Govindaraj temple at Pinnathur village, Chidambaram Taluk. A valuable right is accrued to this respondent. If the petition is allowed, great prejudice will be caused to this respondent. Further petitioner wants a relief of declaration of title and for recovery of possession. Respondent has denied the title of the petitioner. Hence by way of abundant caution, the petitioner ought to have taken steps within 3 years. Hence the petition is barred by law of limitation. The court fee paid is wrong and incorrect. The market value of property as per guideline value is Rs.200 per sq.ft. Which comes to Rs.8,75,000/-. The respondent has put up a RCC terraced building by spending more than Rs.20,00,000/-. But petitioner has valued the property at Rs.54,000/-. On what basis the petitioner fixed the market value at Rs.54,000/- is not known. This petition is filed belatedly. It is settled law that the grant of application, for amendment be subject to certain conditions namely, (i) When the nature of it is changed permitting the amendment, (ii) when the amendment would result in introducing new cause of action and intends to prejudice to the other party, (iii) When the allowing amendment application defeats the law of limitation. The affidavit allegations are vague, bald, wrong and incorrect just to protract the litigation.

tion the petitioner has come forward with this belated petition. If the petition is allowed, it will change the character of suit and cause of action and great prejudice will be caused to this respondent.

7. The Ex.P1 is the Re-settlement register, Ex.P2 dated: 9.9.2016 is the proceedings of Joint Commissioner, HR and CE, Villupuram and Ex.P3 dated: 30.11.2023 is the proceedings of Joint Commissioner, HR and CE, Cuddalore in which the plaintiff @ petitioner was appointed as hereditary trustee of Masimagam Kattalai, Thillai Govindaraja Temple. Ex.P4 is the guideline value of Suit survey number viz., 242/1 and which value is mentioned as Zero. Ex.R1 is the guideline value of street which the respondent alleges to be the suit property street.

8. On perusal of records, it is seen that the core contention in plaint is with regard to Masimagam Kattalai for Thillai Govindaraja Swamy temple, chidam-  
 abram and plaintiff id the trustee of the said kattalai. Through Ex.P3 it is clear that the plaintiff is the hereditary trustee of the said Kattalai. Therefore, the mere change in cause title will not affect the suit as such the pleading for the said amendment is well made out in the plaint itself at the time of filing the suit. Furthermore, the suit was originally filed only for the relief of permanent injunction and mandatory injunction. If during the pendency of suit to demolish the construction, the respondent has constructed the building to an tune of Rs.20,00,000/-, the plaintiff cannot be compelled to assess the building value for computing the court fee. Furthermore, this petition was filed subsequent to the setting aside of exparte judgment through IA.No.66/2023 dated: 24.8.2023. With regard to valuation made by the plaintiff for relief under Section 25(a) of TN Court fees and suits valuation Act, the Learned counsel for respondent vehemently argued that the suit property values above Rs.50,000/-. In this regard, the petitioner counsel relied upon the Government Order. Ms.No. 3317 of 1972

which states that court fee for suit of recovery of possession filed by religious trust is Rs.15/-.

9. According to this court, this is the amendment petition and any query with regard to commutation of court fee shall be brought by the defendant through separate petition specified under the Appropriate Act. As far as amendment is concerned, the proposed amendment will not constitute a new cause of action or alter the existing cause of action. It is for the plaintiff to prove his case on the basis of oral and documentary evidences. Furthermore, only on the reason that it is the belated petition, the same cannot be dismissed. When such is the situation, in order to render substantial justice by complete adjudication of all the issues involved between the parties with regard to the suit schedule property, this court is of the view that this amendment has to be allowed in the interest of justice and to avoid multiplicity of proceedings. Furthermore, this amendment does not change the cause of action of suit and according to this court it is necessary for the purpose of determining the real questions in controversy between the parties. Therefore, this court is inclined to allow, this petition. On the other hand, it is also to be seen that the plaintiff has been deliberate in conducting the suit which was filed by him and therefore this court is inclined to allow this petition on payment of costs.

**In the result, this petition is allowed on payment of costs of Rs.1000/- to the respondent on or before 1.7.2024. Failing which, this petition will be dismissed on that day. Call on 1.7.2024.**

Dictated to the steno-typist, transcribed by her and typed in computer, corrected and pronounced by me in the open court this the 24<sup>th</sup> day of June 2024.

(Sd/-S.Suganiasri)

Principal District Munsif,  
Chidamabaram.(FAC)

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

|       |            |                                                                     |
|-------|------------|---------------------------------------------------------------------|
| Ex.P1 | 12.08.2016 | Re-settlement register- Certified copy                              |
| Ex.P2 | 9.9.2016   | Proceedings of Joint Commissioner, HR and CE, Villupuram - Original |
| Ex.P3 | 30.11.2023 | Proceedings of Joint Commissioner, HR and CE, Cuddalore - Original  |
| Ex.P4 | 11.4.1990  | Guideline value of Suit survey number viz., 242/1 – Online copy     |

**List of witnesses and documents on the side of the respondents:**

|       |  |                                         |
|-------|--|-----------------------------------------|
| Ex.R1 |  | Guideline value of street – Online copy |
|-------|--|-----------------------------------------|

(Sd/-S.Suganiyasri)  
Principal District Munsif,  
Chidamabaram.(FAC)