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IN THE COURT OF SUBORDINATE JUDGE, MADURANTAKAM.

**Present: Mr. T. GANESH, B.A., B.L.,
Subordinate Judge,
Madurantakam.**

Monday, this 10th day of February 2025

I.A.No.1/2024

in

A.S.No. 48/2010

(CNR.No.TNCG13 – 000005-2006)

1. Sivakami (Died)
2. Uma Maheshwari
3. Sankar

...Petitioners

..Vs..

1. Antharaj
2. Kasper (Died)
3. P.S.Govindarao (Died)
4. M.R. Kuppuraj
5. Balahandar
6. Pakkirisamy
7. Jayamoorthy
8. Ellappan
9. Selvaraj

..Respondents

This petition coming up for final hearing on 31.01.2025 in the presence of Mr.V.Agoram, counsel for petitioners, Mr.S.Subramanian, Counsel for respondents, and having heard the arguments on both sides and having perused the records, having stood over for the consideration of this court till date, this court delivered the following;

ORDER

This petition is filed by the petitioner under Order VI rule 17 of CPC to pass an order to amend the plaint.

2. Petition in brief:

Suit property in O.S 98/2000 has not been properly described and the correct survey number is Dry S.No. 1/7 0.50 cents, Dry S.No. 1/1A1 0.47 cents with temple and Dry S.No. 1/1B1A 0.63 cents in Alambarai village. Hence this petition is filed to amend the plaint as detailed in petition schedule. No prejudice would be caused to the other side. Hence the petitioners file this application to amend the plaint.

3. Counter of the 1st respondent adopted by respondents 4 to 9 in brief:

The respondents deny the allegations set out in the affidavit. Petitioner filed O.S 322/1990 on the file of District Munsif, Madurantakam for AC 5.39. Hence now the petitioner cannot amend the suit property for the total extent of 3.75.5 hec i.e 9 acre 23 cents and the suit property cannot be amended. Further to file application the petitioner has to pay court fee for Ac 9.23. Petitioner has not filed the suit against Govidnarao and temple represented by Kuppuraj and other worshippers. Hence the respondents pray for dismissal of the application.

4. Point :

“Whether this application can be allowed?”

Appellant came up with this application to amend the description of suit property as such the suit property was not properly described. Respondents deny the same.

At the outset it is pertinent to note that the petitioner wants to delete the entire description of suit property and include a new description of suit properties. No doubt that it will change the entire cause of action and the nature of suit, which is not permissible. If at all the entire description of property was wrong, then the petitioner can very well file a separate suit. So, when the alleged amendment introduce new cause of action and alter the nature of suit, then it cannot be allowed.

Next in the affidavit it is alleged that the suit property in O.S 98/2000 was not properly described and it has to be amended. In affidavit,

*“The suit property in **O.S 98/2000** has not been properly described ,the correct dry S.No.1/7- 0.50 cents, dry S.No.1/1A1-0.47 cents with temple, dry S.No.1/1B1A-0.63 cents in Alambarai village.”*

But in the details of amendment,

*“In plaint in **O.S 322/1990** to delete the suit property and to add following:*

Chengalpattu District, Cheyyur Taluk, Vembanor Firka, Alambarai village,

1.Dry S.No.1/7 – 0.50 cents

2.Dry S.No.1/1A1 – 0.94 cents with temple

3.Dry S.No.1/1B1A – 1 acre 26 cents

4.Dry S.No.1/1A3 – 1 acre 10 cents”

Here the pleadings in affidavit differ with the details of amendment in respect of suit number. So, it is unable to fathom upon for which plaint the petitioner files this application for amendment. On threshold itself this application is liable to be dismissed.

Next admittedly the alleged amendment is after trail and that too in appellate stage. Now it has to be seen whether this application satisfy the grounds mentioned

under Order VI Rule 17 of CPC to amend the plaint. Order VI Rule 17 CPC read as follows;

*“17. **Amendment of pleadings.**—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: **Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.**”*

So, as per the said provision the petitioner ought to plead and prove that inspite of due diligence he could not have raised the matter before commencement of trial. Here trial commenced, judgment delivered and appeal also filed. No doubt that the amendment of pleadings can be filed at any stage including appellate stage. But here the petitioner didn't plead a single line that he was unable to raise the alleged amendment before commencement of trial, muchless in the trial court before pronouncement of judgment. Petitioner simply plead in the affidavit that the suit property was wrongly described and hence he wants to amend. So, the petitioner has failed to comply the proviso clause of Order VI Rule 17 of CPC to allow this application. On this ground also this application is liable to be dismissed.

Next the learned counsel for the petitioner argued that the trial court in its judgment gave a finding that the description of suit property is incorrect and hence the petitioner came up with this application with correct description of suit property. Unfortunately there is no such pleadings in the affidavit as such due to the findings by the trial court judgment the petitioner has came up with this application. So, it cannot be taken into consideration. Even for argument sake if the petitioner came up with this application due to the findings of trial court, then he will file this application in earlier stage itself. It is pertinent to note that the appeal is of the year of **2010** i.e

more than **15 years old**. But this application to amend the plaint was filed on **16.04.2024** which is after a period of 14 years from the date of filing appeal. If really the petitioner wants to amend the plaint as per findings of the learned trial judge, then he could have filed this application in earlier occasion and cannot wait for more than 14 years and file this application. This clearly shows that the lethargic attitude of the petitioner in proceeding a **15 years old appeal** and no doubt that this application is nothing but to drag on the proceedings. On this ground also this application is liable to be dismissed.

In summation there is no ground muchless sufficient cause was shown by the petitioner to amend the plaint that too in the appellate stage and this application is not maintainable in law or in facts. Hence this point is decided accordingly.

5. Result:

In the result this application is dismissed as devoid of merits. No costs.

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 10th day of February 2025.

Subordinate Judge,
Madurantakam.

I. Petitioners side Evidence and Exhibits : Nil

II. Respondents side Evidence Exhibits: : Nil

Subordinate Judge,
Madurantakam.

TNCG130000052006



Fair / Draft order
IA No.1/2024
in
A.S No.48/2010
D.D: 10.02.2025,
Subcourt,
Madurantakam.