

**IN THE COURT OF SUBORDINATE JUDGE,
MADURANTAKAM.**

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

Monday, this 30th day of June 2025

I.A.No. 3/2025

in

O.S.No. 90/2018

(CNR.No.TNCG13 – 000351-2018)

K. Shanmugham

...Petitioner/Plaintiff

..Vs..

1. K.Nandakumar

2. N. Saraswathi

...Respondents/Defendants

This petition coming up for final hearing on 17.06.2025 in the presence of Mr.R.S.Renganathan, counsel for petitioner/plaintiff, Mr.E.Elango, counsel for the respondents/defendants, 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 to amend the plaint.

2. Petition in brief:

Petitioner is the plaintiff in the above suit. Petitioner filed the above suit as against the respondents/defendants for the relief of declaration of his title over the suit "B" schedule property in survey No. 19/140 of Kolampakkam Village and for recovery of possession of the same from the respondents/defendants and also for mandatory injunction as against the respondents/defendants to remove the compound wall illegal put up by them in the suit "B" schedule property.

At the time of filing of the suit, the petitioner gave measurement for the 'B' Schedule property as measuring East x West 5 feet on both North and South side and further 55 feet on both the East and Western side in the suit schedule of property and further describing the suit 'B' schedule of property in plaint plan as BCDG by giving the above said measurements. Advocate commissioner appointed by this Court in I.A.No. 438 of 2018 in O.S.No. 90 of 2018 submitted his report and plan wherein the learned advocate commissioner stated that the respondents/defendants by encroaching a portion shown as triangular shape marked as BCD in advocate commissioner plan - in survey No. 19/14D belongs to the petitioner and put up compound wall to the length of 17.2 meters with height of 5 feet on the North x South direction, mentioned it as BD in his report and plan.

Petitioner had given in the suit 'B' schedule of property as rectangle shape in his plaint rough plan. Advocate commissioner after measurement with help of surveyor mentioned the encroached portion as BCD in triangular shape and gave measurement of 17.2 meters on the North South direction on both East and Western side of the suit 'B' schedule property and further 0.4 meter on the East West direction on the Northern side of the suit 'B' schedule property. So, in the plaint schedule of property the previous measurement given by

petitioner to be amended suitably by substituting the measurement given by the advocate commissioner in his plan and report after removing my measurement given in the suit 'B' schedule property. Hence petitioner constrained to file the present petition seeking leave of this Court to permit and allow petitioner to amend the suit 'B' schedule of property measurements as detailed in the petition in pursuance of the measurements of the 'B' schedule of property stated in the advocate commissioner report by removing his previous measurement given in the suit 'B' schedule of property and substitute the measurement of the advocate commissioner in that place. The proposed amendment is highly just and necessary for passing of decree and mandatory injunction and the relief of recover of possession for the correct and actual encroached area. The proposed amendment would no way alter the nature of the case, nature of the suit reliefs and the cause of action already stated and pleaded in the original plaint.

Whereas the proposed amendment would helpful to know the correct identity of the suit 'B' schedule of property for removing the compound wall illegally put up by the respondents/defendants by way of mandatory injunction. The proposed amendment would no way cause any loss and hardship, injustice to the respondents/defendants. On the other hand if leave is not granted to the petitioner to amend suit plaint 'B' schedule of property, it would cause great loss and hardship, injustice to petitioner. Hence the petitioner files this petition for amend plaint.

3. Counter in brief:

The respondents deny the allegations set out in the affidavit. Petitioner and his counsel served a memo to respondents counsel, on behalf of Advocate Commissioner, with regard to visit the suit property, on 09.01.2021 at 10.30 a.m. The learned Advocate Commissioner has started the measurement at about 11.45 a.m. and finished the measurement at about 1.15 p.m. The learned

Advocate Commissioner has not properly measured the suit property. The learned Advocate Commissioner has measured only on the western side of the suit property. The respondents requested to learned Advocate Commissioner to measured the eastern side of the suit property. The learned Advocate commissioner refused the same. If the learned Advocate Commissioner has measured on the eastern side of the suit property, the truth will come out. This respondents also already filed memo before this court on 23.01.2021, with regard to the measurement.

Respondents have put up a compound wall in their property and not in the petitioner's property. Before putting up compound wall, the respondents have measured their property with help of surveyor. The respondents never encroached into the petitioner's property. There is no necessity the respondents trespassed into the petitioner's property.

The learned Advocate Commissioner has not properly measured the suit property and the learned Advocate Commissioner not fully execute the warrant issued by this court. This respondent further submits that as per the court direction, the learned Advocate Commissioner has not fully and properly execute the court warrant issued by this court. The measurement given by the advocate commissioner in his report and plan is incorrect. Respondent has already filed the objections in respect of the advocate commissioner's report and plan. The present petition filed by the petitioner is not at all maintainable. Only drag the further proceedings the present petition is vexatiously filed by the petitioner. On the scope alone the present petition has to be dismiss in limini. If the petition is allowed, this respondents will be put into great loss and hardship. On the other hand, no prejudice will be caused to the other side. Hence this petition is liable to be dismissed with cost.

4. No oral or documentary evidence adduced by petitioner and respondents.

5. Heard both sides and perused the records.

6. Point:

“Whether this application can be allowed?”

This petition is filed under Order VI Rule 17 CPC by the petitioner/plaintiff seeking leave of this Court to amend the description and measurements of the suit "B" schedule property as originally stated in the plaint, in view of the report and plan submitted by the learned advocate commissioner.

The respondents defend that the report and plan of the commissioner itself incorrect and wrong and that the application is only to protract the proceedings.

On consideration of the respective submissions and materials placed, this Court finds that the amendment sought by the petitioner is primarily to align the suit schedule with the physical features and measurements reported by the Court-appointed Advocate Commissioner. The amendment neither introduces a new cause of action nor changes the nature of the reliefs already claimed in the plaint. Rather, it appears necessary for the proper adjudication of the dispute and to avoid any ambiguity regarding the identity and extent of the suit property.

It is well-settled that amendments to pleadings, particularly those which help in clarifying factual issues and assist the Court in arriving at an effective adjudication of the real controversy between the parties, ought to be permitted unless they cause serious prejudice or alter the fundamental nature of the suit. In the present case, the respondents have already filed objections to the Advocate Commissioner's report, and they are at liberty to contest the veracity and correctness of the Commissioner's findings at trial. The proposed amendment can thus be permitted, without prejudice to the respondents' right to

cross-examine and challenge the Commissioner's report in due course.

Apart from that it is pertinent to note that the alleged amendment is pre trial one. Accordingly, in the interest of justice and for a complete and effective adjudication, this Court is inclined to allow the amendment as sought.

But on perusal of the records the learned commissioner filed his report on 24.06.2024, thereafter this court has framed issues and post the case for evidence. When the case was pending for evidence of petitioner, this application was filed on 20.01.2025, after a period of six months from submission of report and plan by the learned commissioner. This shows the lethargic attitude of the petitioner in proceeding a seven years old case. Considering the same this court inclined to allow this application on conditions. Hence this point is decided accordingly.

7. Result:

In the result this application is allowed on conditions that,

- i) the petitioner shall pay a sum of Rs. 1000.00 (Rupees One Thousand) only to the respondents on or before 07.07.2025 and
- ii) the petitioner shall carry out the amendment and file the amendment plaint copy on 08.07.2025.

Call on 08.07.2025

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 30th day of June 2025.

Subordinate Judge,
Madurantakam.

Both sides evidence and Exhibits : Nil

Subordinate Judge,
Madurantakam.

**Fair / Draft order
IA No. 3/2025
in
OS No. 90/2018
D.D: 30.06.2025,
Subcourt,
Madurantakam.**