

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

PRESENT: Tmt. V. Devapriya, B.Sc.,M.L.,
District Munsif, Madurantakam

Friday, the 28th day of March, 2025

**I.A.No.2/2024
in
O.S.No.377/2008**

1. Kuppan (died)
2. Krishnan
3. Arumugam
4. Ekambaram
5. K.Kamala
6. K.Mariammal
7. K.Sathiya
8. K.Anjalai
9. K.Arumugam
- 10.K.Suresh
- 11.K.Savithiri

...Petitioners/Plaintiffs

..Vs..

1. Subbarayan (died)
2. Muniyandi
3. Arumugam
4. Jayalakshmi
5. Sakunthala

...Respondents/Defendants

This petition coming up before me on 21.03.2025 for final hearing in the presence of, Thiru.S.Subramanian, counsel for the Petitioners 2 to 11/Plaintiffs 2 to 11 and 1st Petitioner/1st Plaintiff having been died and Thiruvalargal.M.Arumugam, A.Vinothkumar, A.Vimalraj, counsels for the Respondents 2 to 5/Defendants 2 to 5 and 1st Respondent/1st Defendant having been died and after hearing the arguments on

both sides and upon perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition has been filed by the Petitioners/Plaintiffs under Order VI Rule 17 of Code of Civil Procedure, to amend the plaint.

2.The averments stated in the petition in brief :

The Petitioners/Plaintiffs had filed the above suit for declaration and permanent injunction. Now the suit is posted for Plaintiff side evidence. The suit S.No.461/27 is only 0.63 cents but at the time of filing suit, the suit property was wrongly typed as 0.87 cents. It is a only a typhographical error. Hence the petition.

3. The averments stated in the counter filed by the 2nd Respondent/2nd Plaintiff and adopted by Respondents 3 to 5/Defendants 3 to 5, in brief:

This petition is not maintainable under law and on facts. The averments in the affidavit are false. The proposed amendment of the extent of the suit property, the extent in the boundaries will change the character and the entire pleadings of the suit property after the commencement of trial i.e., after almost completion of cross examination of PW1, namely R.Krishnan.

4. The PW1 had categorically admitted in the cross examination that there was two survey numbers in the alleged sale deed of the year 1988 i.e., one survey number was patta land and another survey number was 'patta' land and another survey number was 'Government Poramboke Land' and thus together total to an extent of 0.87 cents

in which the 'patta land' S.No.461/27 to an extent of 0.63 cents and the 'Government Proamboke Land' to an extent of 0.24 cents in survey number 144 and thus total to an extent of 0.87 cents in the 'Schedule of property' in the alleged 'Sale deed' entered on 25.09.1988. This petition is filed after lapse of almost 16 years, after filed the above suit in the year, 2008.

5. Apart from above, the PW1 had also further admitted that he doesn't knew about the 'ban' that the suit property cannot be sold within 10 years of assignment i.e., issuance of the 'patta' to 1st Defendant namely, R.Subbarayan who was expired on 31.12.2009. The PW1 has further admitted in the cross examination dated 13.02.2024 that even after the expiry of that 10 years ban period, they haven't approached the said R.Subbarayan for the completion of the Registration formalities and thus in as much so, where is the 'question' of amendment of extent of the suit property after having lapse of almost 16 years as they Petitioners/Plaintiffs had filed the above suit in the year, 2008.

6. When the PW1 was put into the witness box and cross examined him more than 99% on 13.02.2024 where he has further admitted that they have filed the above suit for both the survey numbers i.e., 'patta land' in S.No.431/27 to an extent of 0.63 cents and the 'Government Poramboke land' to an extent of 0.24 cents in S.No.144 and thus total to an extent of 0.87 cents and therefore, the admitted facts cannot be enquired again as per Section 59 of Evidence Act, 1872 and hence, the 'question' of amendment of extent of the suit property cannot arose at this juncture of the suit. The

Petitioners/Plaintiffs had filed I.A.No.1129/2014 for paying of the Registration Fee for the 'alleged sale deed' dated 25.09.1988 which was dismissed on 18.09.2014 against which the Petitioners/Plaintiffs preferred in C.R.P.(PD). No.287 287/2015 which was adjudicated on 12.12.2018 only on the pretext of proving the possession of the suit property. Hence, this petition is liable to be dismissed with costs.

7. The point for determination is whether this petition is to be allowed or not?

8. No Exhibits marked and no witnesses were examined on both sides.

9. Heard both sides and perused the records.

10. The Petitioners/Plaintiffs had filed this petition to amend the extent of the suit property on the ground that the same is only a typographical error. The Respondents/Defendants resisted the petition stating that the amendment will alter the nature of the suit.

11. The Petitioners/Plaintiffs had sought for an amendment to amend the extent of the suit survey number 461/27 as Ac 0.63 cents instead of Ac 0.87 cents. The Respondents/Defendants had stated that the PW1 had admitted during his cross examination that he had filed the above suit for two survey numbers and that the total extent is Ac 0.87 cents. However, perusal of the plaint in the above suit reveal that the Petitioners/Plaintiffs had filed the above suit only for the survey number 461/27 and the extent is mentioned as Ac 0.87 cents.

12. Records show that the Petitioners/Plaintiffs had filed the above suit based on the sale deed dated 25.09.1988, which is marked as Exhibit A-1, in the above suit.

Perusal of Exhibit A-1 shows that there are two survey numbers in the same, such as S.No.461/27 to an extent of Ac 0.63 cents and S.No.144 to an extent of 0.24 cents, total extent Ac 0.87 cents. As observed above, the Petitioners/Plaintiffs had filed the above suit only for S.No.461/27. As per Exhibit A-1, the extent of S.No.461/27 is Ac 0.63 cents only. Therefore, this court is of the opinion that the amendment is necessary, for the proper adjudication.

13. Relying upon the judgment of the Hon'ble Supreme Court, in the case of *Basavaraj Vs. Indira and others*, [Civil Appeal No.2886/2012 dated 29.02.2024], the learned counsel for the Respondents/Defendants contended that the proposed amendment alters the nature of the suit and therefore as per the above judgment, the proposed amendment is not permissible. The Petitioners/Plaintiffs had not amended the prayer or the facts of the above suit and had only sought for the amendment of the extent, based upon the document. Further, the Petitioners/Plaintiffs had not taken any inconsistent pleas. Therefore, this court opines that the proposed amendment does not alter the nature of the suit, and hence the above judgment is not applicable to the present petition.

14. Even though the PW1 admits that he had filed the above suit for two survey numbers and the total extent is Ac 0.87 cents, as per plaint, the Petitioners/Plaintiffs had sought relief only in respect of the S.No. 461/27 and the above suit will be decided only in respect of the said survey number. Therefore the contentions of the Respondents/Defendants is unsustainable. Hence for the foregoing reasons, this court

is inclined to allow this petition. However, considering the delay and laches on the part of the Petitioners/Plaintiffs, this court is inclined to impose costs.

15. In the result, this petition is allowed on costs of Rs. 1000/- to be paid by the Petitioners/Plaintiffs to the District Legal Services Authority, Chengalpattu, on or before 04.04.2025, failing which, this petition will be dismissed automatically. Call on 04.04.2025.

Partly dictated to the Stenographer, typed by her and partly typed by me in my laptop, corrected and pronounced by me in open court on this the 28th day of March, 2025

District Munsif
Madurantakam

Petitioner side witnesses and documents:

Nil

Respondents side witnesses and documents:

Nil

District Munsif
Madurantakam