

IN THE II ADDITIONAL CITY CIVIL COURT, CHENNAI

Present: Tmt.K. Geetha Rani, M.A., M.L.,
III Additional Judge
(FAC) II Additional City Civil Court, Chennai
Monday the 2nd day of March 2026

I.A.No. 3 of 2025

in

O.S.No. 4093 of 2019

1.N.Balajivenkat, S/o. Late Mr. R.Natarajan, 'Shilpa' First Floor, 36/150, Santhome High Road, Mylapore, Chennai-600 004.

2.Cap. P.B.Narayanan, S/o. A.N. Nayar, 3rd Floor, No.85/14, Srirangam Avenue, Pantheon Road, Egmore, Chennai-600 008.Petitioners/Plaintiffs

Vs.

1.O.S.Sundaravadivelu, Plot No. 66, Old No. 13, Collectorate Colony Main Road, Aminjakarai, Chennai-600 029.

Also 1 D Indra Enclave, No. 52, Narasimman Street, Aminjakarai, Chennai.

2.A.Shivakumar, S/o. Arumugam, Kilapuk, Chennai-600 010.

3.S.Gunasekaran, S/o. S.K.Satchidanandam, No.12, Old No. 18/2, West College Road, Arumbakkam, Chennai-600 106.Respondents/Defendants

This petition having come up on 23.01.2026 for final hearing before me in the presence of M/s.Dr.P.Vasudevan and D.Sairamkumar, Counsels for petitioners/Plaintiffs, and M/s.O.Padmaprakash, G.Mohanm and O.Ashwini Prakash, Counsel for 1st respondent/defendant and the respondents 2 and 3/defendants 2 and 3 were already set exparte and upon perusing the petition and other connected records

and after hearing arguments of both side having stood over for consideration till this day, this court delivered the following:

ORDER

This application filed by petitioners/Plaintiffs under Order VI Rule 17 of C.P.C to permit the petitioners to amend the plaint.

2. The averments made in the petition in brief reads as follows:-

The 1st petitioner herein is the 1st plaintiff in the above suit. The necessity for seeking an amendment to the plaint has arisen since the first defendant has now provided the document namely B-2 alleged to have been issued by the bank reveals that a cheque for Rs.8,00,000/- (Rupees eight lakhs only) namely cheque dated 07.07.2004 bearing No. 967518, Syndicate Bank, Aminjekarai Branch has never been encashed at all. Even when he applied for the particulars of the very same cheque details under RTI Act, he was sent a reply dated 21.03.2024 from the very same bank stating that the bankers are not obligated to keep the physical records for a period over 10 years as per the banking Companies (period of preservation of records Rules) 1985. When the payment of Rs.7,00,000/- (Rupees seven laksh only) has been encashed by the first defendant himself since his signature appears on the reverse side of the cheque beneath the signature of the bearer's signature that is 2nd defendant namely A. Shivakumar. It is only for this reason an application was filed by the plaintiffs cum applicants to issue subpoena to call for Bank officer. However this Hon'ble Court has dismissed the said application.

Under the circumstances explained above it has because just and necessary to add the following sentence in the 11th line of para 11 of the plaint "Further cheque for Rs.8,00,000/-(Rupees eight lakhs only) namely cheque No. 967318 dated 07.07.2004 Syndicate Bank, Aminjikarai Branch was also not encashed". In the event the amendment as prayed for in the plaint is allowed by this Hon'ble court none of the interest of the defendants would get adversely affected. On the contrary if the amendment is not permitted the applicants/plaintiffs will be put to irreparable loss and hardships. Further balance of convenience for the amendment is only in favour of the applicant. Hence this petition.

3. The averments made in the counter filed by 1st respondent/defendant in brief reads as follows:-

This respondent submitted that this petition seeking amendment to paragraph 11 of the plaint is not maintainable either in law or on facts. The petitioners/plaintiffs are trying to introduce a new cause of action by way of this amendment. The evidence of both parties has already been recorded and the matter is now posted for arguments. petitioners/plaintiffs have not stated anywhere in the affidavit filed in support of the petition as to why they could not seek the amendment before commencement of the trial. The petitioners/plaintiffs raised the issue of the Cheque for Rs.8,00,000/- for the first time in the LA.No.2 of 2025 for issuing subpoena referring to a Cheque bearing No. 967318 for Rs.8,00,000/-. In the present petition, the petitioners/plaintiffs are referring to another Cheque bearing No.967518 for Rs.8,00,000/-, Thus, the

petitioners/plaintiffs are referring to different cheques at different points of time. The petitioners/plaintiffs have admittedly come up with this petition seeking amendment of the plaint since they failed in I.A.No.2 of 2025 for issuing subpoena. Thus the petitioners/plaintiffs failed to file the plaint with proper particulars and facts are now embarking upon a roving enquiry and evidence gathering. The trial of the suit commenced on 11.01.2023, with the 1st petitioner/plaintiff filing his proof affidavit. My proof affidavit was filed on 02.01.2025 and Ex B1 and B2 were marked on 08.01.2025, cross-examined on 18.03.2025 and 26.03.2025. No questions in regard to the cheque for Rs. 8 lakhs were ever raised in the cross-examination. Thus, trying to introduce this cheque for Rs.8 lakhs in the pleadings by way of amendment now is only a desperate attempt to improve their case by the petitioners/plaintiffs. The reply dated 21.03.2024 from Canara Bank under RTI does not contain particulars of the information sought and RTI. Hence it cannot be relied upon for seeking the amendment. Hence it is prayed to dismiss this petition.

4. The point for consideration:-

1. Whether the petition is to be allowed or not?

5.POINT:

The petitioner has stated that the necessity for seeking an amendment to the plaint has arisen since the first defendant has now provided the document namely

B-2 alleged to have been issued by the bank reveals that a cheque for Rs.8,00,000/- namely cheque dated 07.07.2004 bearing No. 967518, Syndicate Bank, Aminjikarai Branch has never been encashed at all. The petitioner further submitted that when he applied for the particulars of the very same cheque details under RTI Act, he was sent a reply dated 21.03.2024 from the very same bank stating that the bankers are not obligated to keep the physical records for a period over 10 years as per the banking Companies (period of preservation of records Rules) 1985. He further stated that when the payment of Rs.7,00,000/- has been encashed by the first defendant himself since his signature appears on the reverse side of the cheque beneath the signature of the bearer's signature that is 2nd defendant namely A. Shivakumar. It is only for this reason an application was filed by the plaintiffs cum applicants to issue Subpeona to call for Bank officer whereas the said petition was dismissed. Under the circumstances explained above it has become just and necessary to add the following sentence in the 11th line of para 11 of the plaint "Further cheque for Rs.8,00,000/- (Rupees eight lakhs only) namely cheque No. 967318 dated 07.07.2004 Syndicate Bank, Aminjikarai Branch was also not encashed". If the amendment is not permitted the applicants/plaintiffs will be put to irreparable loss and hardships and the balance of convenience for the amendment is only in favour of the applicant. Hence the petition.

6. In the counter the respondent stated that the petition seeking amendment to paragraph 11 of the plaint is not maintainable either in law or on facts. The petitioners/plaintiffs are trying to introduce a new cause of action by way of this

amendment . The evidence of both parties has already been recorded and the matter is now posted for arguments. petitioners/plaintiffs have not stated anywhere in the affidavit filed in support of the petition as to why they could not seek the amendment before commencement of the trial. The petitioners/plaintiffs raised the issue of the Cheque for Rs.8,00,000/- for the first time in the I. A.No.2 of 2025 for issuing subpoena referring to a Cheque bearing No. 967318 for Rs.8.00,000/- In the present petition, the petitioners/plaintiffs are referring to another Cheque bearing No.967518 for Rs.8,00,000/-, both are different cheques at different points of time. Only after dismissal of the I.A.No. 2 of 2025 this petition has been come into force. The petitioners/plaintiffs failed to file the plaint with proper particulars and facts are now embarking upon a roving enquiry and evidence gathering. The trial of the suit commenced on 11.01.2023, and the petitioner/plaintiff filed the` proof affidavit. My proof affidavit was filed on 02.01.2025 and Ex B1 and B2 were marked on 08.01.2025, cross-examined on 18.03.2025 and 26.03.2025. No questions in regard to the cheque for Rs. 8 lakhs were ever raised in the cross-examination. Thus, trying to introduce this cheque for Rs.8 lakhs in the pleadings by way of amendment now is only a desperate attempt to improve their case by the petitioners/plaintiffs. The reply dated 21.03.2024 from Canara Bank under RTI does not contain particulars of the information sought in the RTI. Hence it cannot be relied upon for seeking the amendment. Hence the petition to be dismissed.

7.Heard both sides. On the basis of the petition and also the counter averments the suit has been perused. The suit has been filed for the relief to declare the sale

deed dated 08.07.2004 bearing Document No.2647/2004, SRO, Kodambakkam is null and void and therefore it is non-est under law and consequently direct the 1st defendant to deliver the vacant possession of the suit schedule property to the plaintiff after removing the illegal super structure thereon. More in the plaint the plaintiff has stated about the cheque for Rs.8,00,000/- only through the RTI they came to know that the cheque for Rs.7,00,000/- has not been encashed in favour of the 1st plaintiff has never encashed. When they are able to get the information about the cheque for Rs.7,00,000/- how they forget about cheque for Rs.8,00,000/- has not been stated they not at all pleaded that the another cheque for Rs.8,00,000/- was also not encashed. But whereas now they have filed a petition on the basis of the document marked as Ex.B2 and stating that the said particulars has to be inserted in Para-11 of the plaint. But the Cheque number which has been mentioned by the petitioner cheque number which is now sought to be inserted was also clear from the counter filed by the respondent. However why this uncashed cheque has to be added in the plaint has not been explained by the petitioner and this petition is also filed only after a petition to issue subpoena to the bank manager has been dismissed by the petitioner. Hence the filing a petition under order 6 rule 17 it is the petitioner to state they are do diligent in filing a document and also with regard to the averments only apart from their due diligence they found anything new to the case which is relevant to the case they can file a petition. But that proviso also not complied by the petitioner. Hence the petitioner is not entitled for the amendment as sought by them in the said I.A.

In the result this petition is dismissed. No costs.

Dictated directly to the Steno-Typist, computerized by her, after making corrections pronounced by me in Open Court the 2nd day of March 2026.

III Additional Judge.
(FAC) II Additional City Civil Court,
Chennai.

Petitioner side witness and Exhibits :-Nil
Respondent side witness and Exhibits:- Nil

III Additional Judge.
(FAC) II Additional City Civil Court,
Chennai.

Draft/Fair order I.A.No.3 of 2025 in O.S.No.4093 of 2019 Dated:02.03.2026 II Additional Court.
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