

**IN THE COURT OF THE II ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present : Selvi. V. Sivaranjani, B.A., L.L.B.,

II Additional District Munsif, Nagercoil

Friday, on the 17th day of April, 2026.

I.A. No.12 of 2026 in O.S.No 67 of 2017

CNR No.TNKK04-000103-2017

Veeranathan

(For and on behalf of the Plot owners
of R.S.No.537/2G of Kanyakumari Village)

... Petitioner / Plaintiff

-vs-

1. M. Gopalakrishnan

2. M. Krishna Balan

3. L. Kumar

4. Wilson Selvaraj

5. The Commissioner,

Kanniyakumari Municipality.

6. Kadamban

7. G. Karuppasamy

... Respondents / Defendants
1 to 5 & Addl. Plaintiffs
2 and 3

This Petition came up before this Court on 07.04.2026 for a final hearing in the presence of Mr. V. Kumaran Nair, learned Counsel for the Petitioner and Mr.N. Retnasamy, learned Counsel for the 1st Respondent, counter not filed, set

exparte' and Mr. A. Gnanasekar, learned Counsel for the 5th Respondent and 2nd to 4th and 6th and 7th respondents were set exparte in the suit and upon hearing both sides, perusing the case records, and having stood over for consideration till this day, this court hereby delivers the following:

ORDER

The Petitioner had filed under Order XXIII Rule 1 and Section 151 of the Code of Civil Procedure, seeking to withdraw the suit with the liberty to file a fresh suit for comprehensive reliefs after impleading necessary parties thereon.

2. Gist of Averments in the Petitioner's Petition :

The petitioner is the 1st plaintiff in the suit. The petitioner submits that one Anantha Perumal, S/o. Samuel Nadar was the owner of the 57 cents of land in the Re-Survey No.537/2G. Whereas, as per lie, it consisted of 53 cents of land. The said land owner had divided the area comprising Re-Survey No. 537/2G into house plots and sold to various persons. Of which the petitioner was one of the purchasers having purchased 4 cents of land, which was subdivided as 537/2G2.

3. The petitioner further submits that just for the access of those house plots, a lane on the east of those house plots, having a width of 12 feet was formulated in the Patta land and the said land was formulated exclusively for the

purpose of access of the purchasers of those house plots. The petitioner further insisted that a portion of the said purchased 4 cents of land was left out for the formation of the lane and he had put up a residential building within the said area of 4 cents of land and assessed building in his name. The petitioner claims to be a co-owner of the said lane which was formulated for the access of the purchases of those house plots and also insisted that except those purchasers , nobody has any right over the said lane, which is carved out from the Patta land of the respective owners.

4. Further more, the petitioner alleged that the defendant and others without having any manner of right over the said lane had attempted to interfere with the right of the plaintiffs and the co-owners of the lane. In those circumstances, the petitioner was pre-forced to institute this suit for declaration and other reliefs. Subsequently, the other additional plaintiffs were also impleaded.

5. In view of the aforesaid facts, the petitioner submits that the subject matter of the suit should be the said common lane which is meant for the exclusive use of those purchasers. Instead of describing the aforesaid lane as the schedule property, the petitioner alleged that quite unfortunately, only the four cents of land was projected as the subject matter of the suit and the relief sought for petitioner's 4 cents of land and claims it to be a prima facie blatant mistake. The petitioner further stated that such inadvertent mistake would cut the root of

the case and it may be difficult for the petitioner to get appropriate relief in this suit and if the petitioner makes any attempt for amendment of the plaint, it seems it would change the structure of the suit.

6. Therefore, the petitioner intended to withdraw the suit at this stage, so as to come forward with a comprehensive suit for appropriate reliefs and impleading all the necessary parties there on. Hence, the petitioner seeking permission to withdraw the suit with liberty to file a fresh suit to establish his co-ownership right along with the other co-owners over the lane in the re survey number 537/2G. Hence, this petition is to be allowed.

7. **Gist of Averments in the 5th Respondent's Counter:**

The 5th respondent is the Commissioner, Kanyakumari Municipality stated that does not know about the alleged purchase of the plaintiff and the purchase of predecessor. Further, the 5th respondent denies that the said lane was used by the plot owners or the purchasers of those house plots. Also, the alleged transport stated is an imaginary story perpetuated by the plaintiff to file this vexatious suit against this defendant. The 5th respondent claims that the said pathway is a common one of Swaminatha Puram Village People and General Public and also for plot wants to reach Kanyakumari to Nagarcoil Road and it is not in the exclusive possession of the plot owners. It is being used as a common pathway over years.

8. The 5th respondent further alleged that the new comprehensive suit has no scope at this stage of the current suit and the plaintiff wilfully tried to suppress the original fact to file a new vexatious suit with malafide intention against this defendant. Hence the suit is unnecessary. The 5th respondent also submitted that the plaintiff has not provided any corroborative documents to ascertain the fact and there is no credibility in the comprehensive route. Henceforth, the petitioner approached this court without a clean hands. Hence, the petition is to be dismissed.

9. The point for consideration is whether the above petition has to be allowed or not?

10. Heard both sides. Records perused.

10.1. No oral and documentary evidence adduced on either side in respect of this petition.

10.2. The case of the petitioner is that the subject matter of the suit should be the said common lane which is meant for the exclusive use of the plot purchasers and the same has been unfortunately not included in the schedule property and claims it to be an inadvertent mistake and alleged that it would cut the root of the case, and it may be difficult for the petitioner to get appropriate relief in the suit therefore, seeking permission to withdraw the suit with liberty to file a fresh suit.

10.3. Under Order XXIII Rule 1(3) of CPC, withdrawal of a suit with liberty to file a fresh suit can be permitted only if the court is satisfied that the suit must fail by reason of “formal defect” or there are “sufficient grounds” for allowing such withdrawal.

10.4. The object of the provision is not to enable a litigant to avoid an adverse decision or to re-agitate the matter after rectifying defects in the case, but only to prevent failure of Justice on account of technical or procedural defects.

10.5. With regard to the requisites for withdrawal of the suit, the Hon’ble Supreme Court of India explained the ‘formal defects’ and ‘sufficient ground’ in Order XXIII Rule 1(3)(a) and (b) in **V.Rajendran Vs Annasamy Pandian [2017(5) SCC 63]** as *“formal defect is a defect of form prescribed by the rules of procedure such as, want of notice under section 80 CPC, improper valuation of the suit, insufficient court fee, confusion regarding identification of the suit property, mis-joinder of parties, failure to disclose a cause of action etc”*. *“In interpretation of the word “sufficient grounds”, there are two views: one view is that these grounds in clause (b) must be ejusdem generis with those in clause (a), that is, it must be of the same nature as the ground in clause (a) that is formal defect or at least analogous to them; and the other view was that the words other sufficient grounds in clause (b) should be read independent of the*

words a formal defect and clause (a). Courts have been given a wider discretion to allow withdrawal from suit in the interest of justice in cases where such a prayer is not covered by clause (a).

10.6. In the above judgement, the Hon'ble Supreme Court has explained that a "formal defect" refers to defects of form or procedure such as improper valuation, insufficiency of Court fee, misjoinder of parties or confusion regarding identification of property.

10.7. Thus, this court is of the considered view that a defect relating to improper or insufficient description of property may in appropriate cases amount to a formal defect, provided such defects results in inability to identify the property and consequently affect the maintainability or adjudication of the suit.

10.8. In this context, it is relevant to examine the plaint for the compliance of Order VII Rule 3,

Order VII Rule 3 says "Where the subject-matter of the suit is immovable property. Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers".

10.9. In the present case, the petitioner contends that the common lane has not been included in the schedule property. However, on a careful perusal of the pleadings, reliefs sought, evidence on record and the Advocate commissioners report, it is evident that the existence, location and usage of the said lane have been substantially brought on record.

10.10. Therefore, the omission to include the lane in the suit schedule Property alone has not resulted in any failure of identification or identification of the property in dispute. The court is in a position to clearly understand the controversy and adjudicate upon the rights of the parties.

10.11. Hence, this court is of the view that the defect pointed out by the petitioner does not fall within the scope of a formal defect as contemplated under order XXIII, Rule 1(3) read with order VII Rule 3 CPC.

10.12. Another reason for a mandate of Order VII Rule 3 of the CPC which requires where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it is such description enables the Court to draw a proper decree as required by Order XX Rule 3 of the CPC.

10.13. Notwithstanding the said common lane not included in the suit schedule property, the same is curable as per the following ruling held by the Hon'ble Supreme Court in **Pratibha Singh and Anr vs Shanti Devi Prasad**

And Anr. (2003) 1 ICC 792, wherein it was held as follows,

“When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order VII Rule 3 and Order XX Rule 3 of [the CPC](#) is capable of being cured. After all, a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 of the CPC depending on the facts and circumstances of each case-which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 of the CPC by the Court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of decree within the meaning of [Section 47 CPC](#). A decree of a competent Court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission.

10.14. Therefore, the defects in the description of the immovable property are not fatal and can be corrected even at a later stage, including during execution, by invoking Section 152.

10.15. As such, the court is of the considered view that non-inclusion of the common lane in the suit property is curable in nature and cannot be a ground

for permitting withdrawal of the suit with liberty to file a fresh suit.

10.16. Above all, it is pertinent to know that the suit is of the year 2017 and has reached the stage of arguments after completion of full-fledged trial. Evidence has been recorded and an advocate commissioners report is also available on record dealing with the alleged common Lane.

10.17. At such an advanced stage, permitting withdrawal would result in reopening the entire matter, causing prejudice to the respondents / defendants and leading to unnecessary multiplicity of proceedings.

10.18. Further, the petition appears to be an attempt to overcome deficiencies in the case and to frame the suit which is impermissible. Order XXIII Rule1(3) cannot be invoked to fill up lacunae or to secure a fresh opportunity to litigate on an improved case.

10.19. The petitioner, having proceeded with the suit for several years and allowed the matter to reach the stage of arguments, cannot now be permitted to withdraw the suit, merely on the ground that a different or better formulation of the case is possible.

10.20. Furthermore, the petitioner has not established any independent “sufficient grounds” warranting withdrawal of the suit. The sole reason for withdrawal of the suit is only the non-inclusion of the common lane in the suit schedule property, which has already been found to be neither formal defect nor

incurable.

10.21. Accordingly, this court holds that the omission to include the common lane in the schedule property does not constitute a formal defect and the requirement under Order VII Rule 3 CPC stands substantially satisfied as the property identifiable from the material on record. Further, the alleged defect does not affect the adjudication of the suit. In addition to that, while execution, in case of difficulties, it has already been held by the Hon'ble Apex Court that the decree can even be corrected by invoking Section 152 in case of any inadvertent error. Also, the petition is filed at a belated stage and there exists no sufficient grounds to permit withdrawal with liberty. In the light of above facts, precedents and circumstances, this court is not inclined to allow this petition.

As a result, this Petition is dismissed. No cost.

Dictated to the steno-typist, typed by her in the Computer directly, printed, corrected and pronounced by me in open court this the 17th day of April, 2026.

II Additional District Munsif,
Nagercoil.

Petitioner side witnesses and documents -: Nil.

Respondents side witnesses and documents : Nil.

II Additional District Munsif
Nagercoil.

*II ADM, Nagercoil.
Draft/Fair Order
I.A.No.12/2026 in
O.S.No.67/2017
Date: 17.04.2026.*