

**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 26th day of September, 2025.

I.A. No. 5 of 2025 in O.S. No. 224 of 2021

CNR No.TNKK04-000291-2021

Sakthivel

... Petitioner /Plaintiff

-vs-

1. T. Manikandan

2. V.K. Mala

... Respondents / Defendants

This petition came before this court on 25.09.2025 for a final hearing in the presence of Mr. J. Parthasarathy, Advocate for the Petitioner / Plaintiff and and Mr. S. Nagarajan, Advocate for the Respondents / Defendants 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 has filed the above petition under Order VI Rule 17 of the Code of Civil Procedure, seeking to amend the plaint as mentioned below for the proper adjudication of the suit.

2) Gist of Averments in the Petitioner / Plaintiff Petition :

The petitioner is the plaintiff in the suit. The petitioner has filed the suit for declaration and other reliefs. The petitioner had filed the suit claiming that the Plaint 'A' schedule Property is his property comprising 1.482 cents in resurvey No A13/191, of Old survey No A13/35 of Vadasery Village, and petitioner had constructed a house and had obtained Town Patta for the said property the defendants have encroached upon the Plaint 'B' schedule Property comprising 110 sq.ft and also had damaged the wall of the house constructed by petitioner. So, petitioner had filed the suit for Declaration and recovery of possession and other reliefs petitioner had prayed for in the plaint.

3. The petitioner along with the suit had filed a commission application IA No 3 of 2022 and the property was identified and measured in the presence of the plaintiff, defendant and their counsels by the Taluk surveyor and in report the area of the plaint 'B' schedule property is determined as 96.69432 sq. ft. not of 110 sq ft as claimed by petitioner in the plaint and so far the end of justice and for the proper adjudication of the suit it is necessary to amend the measurement of encroachment made by the defendant in the plaint. The following amendments are to be made in the plaint for right cause.

a. In the 3rd para of the plaint 4th line the measurement '110 sq ft' has to be amended as '96.69432 sq ft'

b. In the Plaint schedule of properties of 'B' schedule of properties in the Area column the measurement '110 sq. ft' has to be amended to '96.69432 sq ft'

4. The above said amendment has to be made for the proper adjudication of the suit and since the Taluk Surveyor had on surveying the relevant records of the Thoraiya Patta had issued the survey sketch and the commissioner had reported the same. If the above said amendments are not allowed and made petitioner will be put into irreparable loss and hardships and also impede the proper adjudication of the suit. Hence, this petition is to be allowed.

5. Gist of the Averments in the Respondents / Defendants Counter:

The petitioner's claim that the respondent has encroached 1.482 cents under Resurvey Number A-13/191 is false. The petitioner's father gave 3.75 cents through a sale deed to the respondent's mother on 20.02.1982. From them, the 1st and 2nd respondents on 28.08.2019 purchased and have been in possession and enjoyment ever since. There has been no encroachment. Afterwards, even when the petitioner got measurement done by the Taluk Surveyor under the Court's order, there was no encroachment found.

6. When the petitioner, the Court appointed Commissioner, and the Taluk Surveyor made measurements, in the Commissioner's report it is explicitly stated that the petitioner had, in fact, encroached 110 sq. ft of the

respondent's property. Now, in order to hide his fault, he says that the respondent has encroached 96.69432 sq. ft and that it should be corrected in the plaint. This is being done as a tactic to delay the litigation.

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

8. Point:

Heard both sides. Records perused. The petitioner is the plaintiff in this suit filed for declaration and other reliefs. The petitioner stated that the plaint 'A' schedule property is a house for which the petitioner obtained town patta. Further the petitioner alleged that the defendants have encroached upon the plaint 'B' schedule property comprising 110 sq.ft. Subsequently, in the commissioner report submitted after the property was identified and measured in the presence of the plaintiff, defendant and their counsel by the Taluk surveyor, it is determined that the area of plaint 'B' schedule property as 96.69432 sq.ft. not of 110 sq.ft. Hence, sought the amendment.

9. The respondent counsel has raised serious contention that the petitioner, the Court appointed Commissioner, and the Taluk Surveyor made measurements thereby in the Commissioner's report it is explicitly stated that the petitioner had, in fact, encroached 110 sq. ft of the respondent's property. Now, in order to hide his fault, he says that the respondent has encroached

96.69432 sq. ft and that it should be corrected in the plaint. This is being done as a tactic to delay the litigation.

10. While it is observed that the Advocate Commissioner's report was filed on 11.01.2024, and the petitioner is seeking this amendment nearly one year and seven months later, this delay in itself ought not to be fatal to the application for amendment. The Commissioner's report has established that the area of the encroachment is 96.69432 sq. ft and not the 110 sq. ft claimed in the plaint. That alteration is relatively modest in magnitude from 110 sq. ft → 96.69432 sq. ft and falls well within the same cause of action that is, encroachment of a portion of 'B' schedule land rather than introducing a wholly new claim or altering the nature of the suit. In the Commissioner's survey, the measurement was made in the presence of all parties and under the supervision of the Taluk Surveyor. Under these circumstances, the amendment is a correction to align the pleadings with the factual findings already on record, rather than an opportunistic attempt to shift ground.

11. In view of the liberal approach mandated by law to permit amendments that serve to achieve complete justice, and since the amendment does not alter the nature or fundamental character of the suit, this court is of the considered view to allow the amendment sought notwithstanding the delay of one year and 7 months. In the light of above facts and discussion, this court is inclined to allow this petition on conditional cost.

As a result,

This petition is allowed, on the condition that the petitioner shall pay a sum of Rs.1,000/- (Rupees Thousand only) payable to the Mediation and Conciliation Centre, Kanniyakumari at Nagercoil on or before 07.10.2025. otherwise, this petition would be dismissed. Call on 07.10.2025.

Dictated to the steno-typist, typed by her in the Computer directly, printed, corrected and pronounced by me in open court this the 26th day of September, 2025.

II Additional District Munsif
Nagercoil.

List of witness and documents for Petitioner side : Nil

List of witness and documents for Respondents side : Nil

II Additional District Munsif
Nagercoil.

*II ADM, Nagercoil.
Draft/Fair Order
I.A.No.5/2025 in
O.S.No.224/2021
Date: 26.09.2025.*