

IN THE COURT OF SUBORDINATE JUDGE, ERANIEL.

**Present : Tmt. D. Asha Kousalya Shanthini, B.Sc., B.L.,
Subordinate Judge, Eraniel.**

Saturday, the 7th day of December 2024

I.A.No.7/2024

in

O.S.No.99/2021

Daya Madhavan

... Petitioner/Plaintiff

.Vs.

1. Mathu
2. Sumi

... Respondents/Defendants

This petition coming up for final hearing before me on 30.10.2024 in the presence of Thiru. C. Retna Raj, Advocate for Petitioner and Thiru. S Jayakumar, Advocate for respondents and upon hearing the arguments of both sides and upon perusing the records and having stood over for my consideration till this day, this court delivers the following:

ORDER

The petitioner/plaintiff seeks for amendment of the plaint schedule no.as .R.S.no. 271/5 , from R.S.no. 271/26 under order 6 rule 17 CPC. The respondent has filed his detailed counter and they relied upon two documents Ex.R1 and R2.

Heard both sides and records perused.

The only reason stated by the petitioner for amendment is that during the spot visit made by the advocate commissioner, it was found that there was no sub-division as 271/26 and hence the plaint schedule is to be corrected as R.S.no. 271/5. Though the petitioner has submitted that the Taluk Surveyor measured the suit property and found that the suit property comes withing R.S.no 271/5, in the commissioner's report, the advocate commissioner has stated that the plaintiff identified the suit property in R.S.no.271/5, though he mentioned in the petition that the petition schedule property was in RS.no.276/26. The petitioner is not able to clarify on this vital contradiction.

As rightly pointed out by the other side in their counter, it appears that the suit schedule property was not measured using the FMB plan and there is no Taluk Surveyor's plan attached with the report. As argued by the respondents, when the petitioner/plaintiff admitted that his father sold out some portions in R.S.no. 271/26 and subsequently made amendments in the plaint in I.A.no.2/2021, how can he now plead that there was no R.S.no. 271/26 ? As per the registered relinquishment deed Ex .R2 dt.16.9.2005, as per which only the petitioner is seeking for the reliefs in the main suit also the said R.S.no. 271/26 is mentioned. Whileso, how the petitioner is denying the said R.S.no. 271/26 on ground is not explained by the petitioner's side during the enquiry.

Whether the plaint schedule property was measured in conformity with the linear measurements of the plaintiffs and defendant's title deeds and also with the FMB sketch to find out whether they existed on ground or not is not properly explained by the petitioner during the enquiry , which leans very much in favour of the counter averments made by the contesting respondents.

As the present suit prayer is for declaration , injunction and demarcation, the amendment appears to be of such a nature which would change the nature and character of the suit which may cause prejudice to the respondents/ defendants, which cannot be allowed for the reasons stated in the accompanying affidavit.

Considering the facts and circumstances of the present case, for the above said reasons, this court is not inclined to allow the present I.A. as prayed for.

In the result, the I.A. is dismissed. No costs.

Pronounced by me in open court on this the 7th day of December, 2024.

Sd/-
Subordinate Judge,
Eraniel.