

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF

AT KANCHIPURAM

**PRESENT: Tmt. Fanny Rajan, B.A., B.L.,(Hons)
Principal District Munsif, Kanchipuram**

On Friday, the 27th day of February 2026

I.A. No. 7 of 2026

in

O.S.No. 85 of 2020

CNR No. TNKP08-000144-2020

Mrs. Vasanthi

.... Petitioner/plaintiff

/Versus/

Mr. E. Santhanam

.... Respondent/Defendant

This Petition has come up on 19.02.2026 for final hearing before me in the presence of M/s. K.Jagadeesan, Soundarapandi counsels for the Petitioner/Plaintiff and M/s.P. Rajamanikkam, G.Bharani, C. Kaviyaran counsels for the Respondent/Defendant, upon hearing the arguments and upon perusing the connected material records and having stood over till this day for consideration, this court delivers the following orders:

ORDER

1. This petition is filed under order 6 Rule 17 and Section 151 of CPC to carry out the amendment as detailed in the particulars of amendment given in the petition and thus render justice.

Concise Statement of the averments in the Petition filed by the

Petitioner:

2. The petitioner has averred that during the pendency of the suit, she filed a petition under Order XXVI Rule 9 of CPC seeking to appoint advocate commissioner to inspect along with a qualified surveyor. The said petition was numbered as I.A. No. 4 of 2022 and the same was allowed. One Mr. Ilango, Advocate, was appointed as Advocate Commissioner and the said Advocate Commissioner and the Surveyor have filed their Report stating that the respondent/defendant has made encroachment in the suit schedule property. Hence this petition for amendment.

Concise Statement of the averments in the Counter filed by the

Respondent :-

3. The respondent denied the allegations and stated that the petitioner/plaintiff, she did not establish her title so far. The total measurement of property is not disclosed with width and length. There is nothing to show how and when she got the backyard portion, her possession and common passage. As per the survey sketch and report of Advocate/commissioner, there is a passage which belongs to Government Poramboke. If the plaintiff claims share or right on said common passage the Government of Tamilnadu alone

is entitled to look into this subject matter. The Revenue officer or any government body is not party this suit or petition.

4. As per report there is super structure at passage belonging to the Government. The measurement of the building (super structure) is not mentioned. If there is an allegation that the defendant encroached at site belongs to Common passage, the plaintiff should mention measurement of building in respect of encroachment. It is difficult to determine how this dispute can be decided and establish her right, title in the backyard and common passage which belongs to Government. Hence, the petition has to be dismissed with costs.
5. **POINT FOR DETERMINATION:** Whether the Petition under order VI Rule 17 and section 151 of CPC to carry out the amendment as detailed in the particulars of amendment has to be allowed or not?

DISCUSSION AND FINDINGS:

6. This Court considers the submissions of the learned counsels for the Petitioner and respondent herein and perused the materials on record. No ocular or documentary evidence has been let in by the Petitioner and Respondent.

7. This court finds that the suit is filed for permanent injunction as early as 02.03.2021. Thereafter, the advocate commissioner report was filed on 13.07.2023. Thereafter, the evidence of both parties were adduced, recorded and at the stage of arguments this petition is filed.
8. The main contention of the Petitioner is that the advocate commissioner report clearly proves that there is a encroachment in the common passage. Hence this petition to amend the suit to include relief of mandatory injunction. Per contra, the learned counsel for the Respondent contends that the amendment sought is delayed without any basis. There is no material to prove the title and right of the Plaintiff. The alleged encroached portion is not duly identified. It belongs to the Government, who is not a party to this suit. Also, the amendment petition is delayed and malicious. Hence, it has to be dismissed.
9. This court perused the material records including the advocate commissioner report. It is true that there is an observation regarding the alleged encroachment mentioned in this petition even in the plaint at paragraph No.11, 12. Further, the date of construction even as per the Plaint is last week of December 2019.

10. From a thorough reading of the Plaint, there are clear pleadings regarding the encroachment and unlawful construction in the common passage and the date of knowledge of the construction is as early as December 2019. This suit is filed on 04.11.2020. The suit is filed seeking for permanent injunction not to put up unlawful construction only, there is no other relief sought for. This court opines that there is a blatant admission in the plaint regarding the said encroachment, the date of knowledge and reliefs required by the plaintiff are evident even in the plaint. There is no mixed question of law and fact regarding the relief sought to be substituted, as the facts are clearly admitted and pleaded.
11. In light of Order II Rule 2 CPC, the Plaintiff is mandated to seek all the necessary relief regarding a particular cause of action in the same suit except when leave is granted. There is no leave petition filed and granted in this suit. This court considers that having admitted encroachment and unlawful construction in the Plaint pleadings, the Plaintiff ought to have sought this relief of mandatory injunction even at the time of filing the suit. The failure to seek the said relief of mandatory injunction as early as 2020 amounts to bar under Order II Rule 2 CPC.

- 12.** Even assuming that the Advocate commissioner report confirmed the encroachment, the amendment ought to have been filed as early as July 2023. The trial in this suit by examining the Plaintiff started only on 18.11.2024 after the Advocate Commissioner Report was filed. The Plaintiff evidence including PW1 was closed on 22.08.2025. Thereafter, the defendant evidence commenced and closed on 01.12.2025. At the stage of arguments this petition is filed. There is no explanation by the Petitioner regarding this delay in filing the amendment petition and waiting for the trial to be completed. This court considers that filing this petition at the arguments stage would clearly indicate that the Plaintiff failed to exercise the diligence as mandated under Order VI Rule 17 CPC.
- 13.** Further, the limitation period for seeking a relief of mandatory injunction under Article 113 of the Limitation Act. This amendment is filed after nearly 5 years have lapsed since filing of the suit and after the trial is completed, even though the Plaintiff was aware of the alleged encroachments. Further the plaintiff wants to delete the earlier prayer of permanent injunction and substitute relief of mandatory injunction at the fagend of the suit. There is no pleadings in the amendment particular to indicate the date on which the alleged unlawful construction was completed

or due identification of the said construction. This court considers that the Plaintiff had failed to act diligently and establish his bonafides for seeking the relief of substitution at this stage of final arguments in the suit.

- 14.** Consequentially, this court concludes that the Petitioner/Plaintiff had failed to act diligently and seek for amendment even before commencement of trial 18.11.2024 despite being thoroughly aware of the said unlawful construction. Apart from that as the Petitioner/Plaintiff had knowledge of the alleged illegal construction at the time of filing the suit and had failed to seek the necessary relief at the earliest, this court considers that the amendment relief sought is barred under Order II Rule 2 CPC and also by limitation under Article 113 of the Limitation Act. In light of the above discussions, in the interest of justice this court is inclined to dismiss the amendment petition.
- 15.** Considering the nature of dispute between both the parties, this court considers that the parties shall bear their own costs.

RESULT :-

16. In the result, this petition is dismissed. No costs.

Dictated to the steno typist partly, who directly typed the same in her Computer and partly typed by me, corrected and pronounced by me in open court, this the 27th day February 2026.

PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM

Petitioner and defendant side witness and document : NIL

PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM