

**IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, KULITHALAI**

**Present : Selvi.A.Yughathymariya, B.Com, L.L.B.(Hons.,)**

**Additional District Munsif, Kulithalai.**

**Dated Wednesday, the 16<sup>th</sup> day of July 2025**

**I.A No.03/2025 in O.S No. 54/2014**

Kamalam

**...Petitioner/ Plaintiff**

**- Vs -**

- 1) Alamelu
- 2) Saravanan
- 3) The District Collector, Karur
- 4) Thasildar, Kulithalai
- 5) Village Administrative Officer,  
Maruthur North II, Village.

**...Respondents/ Defendants**

This petition has come up for final hearing on 04.07.2025 before this Court in the presence of Thiru.K. Vijayakumar, the Learned Counsel appearing for the Petitioner and Respondents No.1 and 2 was called absent and set exparte and in the presence of Government Pleader Thiru. K.S.M. Sahul Hameed, the Learned Counsel appearing for the Respondents No. 3 to 5 and upon perusal of material records and having stood over for consideration till this day, this court delivers the following:

**ORDER**

- 1) This petition is filed by the Petitioner/Plaintiff under Order 6 Rule 17 and Section 151 of CPC to amend the plaint in O.S. No.54/2014.
- 2) Despite sufficient opportunities given to the Respondents No. 1 and 2, they did not turn up for filing counter and to proceed with this petitions. Hence, the Respondents No. 1 and 2 are set exparte by this Court.

**Brief averments in the affidavit are as follows:**

3) The 1<sup>st</sup> item of the suit property in S.F. No.311/1 is originally belonged to one Arumugam Pillai who is the grandfather of the Plaintiff, which is a land to an extent of 0.42 cents, who purchased the same by way of a registered sale deed dated 31.07.1948. This Arumugam Pillai had also purchased a land in S.F.No.312/1 to an extent 0.10 cents by way of the above said sale deed. After the said purchase of the above lands, the Petitioner's grandfather was enjoying the remaining vaccant Grama Natham lands which were there in the S.F.No.312/1 to a total extent of 0.18 $\frac{1}{2}$  cents. On the basis of his possession, Patta was given in his name for the above said lands.

4) It is also the case of the Petitioner/Plaintiff that after the demise of her grandfather Arumugam Pillai, his father has been in the possession of the suit property and after the demise of her father, this Petitioner and her sibilings have been in the possession of the suit property. The Petitioner along with her sibilings have been living in the said land by way of constructing a thatched house over the 2<sup>nd</sup> item of the suit property and were occupying the remaining vaccant lands by engaging cattles and dumping wastes over there.

5) In respect of the 2<sup>nd</sup> item of the suit property, the Revenue Divisional Officer, Kulithalai had wrongly issued joint Patta to the Petitioner/Plaintiff, the 1<sup>st</sup> Defendant and four other persons, for the said property to an extent of 0.18 $\frac{1}{2}$  cents. After that, when the same was objected by this Petitioner, the Pattas which were granted to the 1<sup>st</sup> Defendant and four other persons were cancelled by the revenue officials and again the Patta in respect of the 2<sup>nd</sup> item of the suit property was changed in the name of this Petitioner.

6) This apart, the Revenue Divisional Officer had also issued a HSD Patta to the 1<sup>st</sup> Defendant and four other persons in respect of the 2<sup>nd</sup> item of the suit property after having issued Patta to the father of this Petitioner and hence the said HSD Patta is not valid and it will no way bind the Petitioner.

7) The 1<sup>st</sup> Defendant and the above said four persons were never been in the possession of the 2<sup>nd</sup> item of the suit property. They all have separate terraced house and tiled house in other lands which were in the eastern portion of the suit property and they have been living therein. This Petitioner/Plaintiff has been in the possession and enjoyment of the suit property, without any interption before filing this petition.

8) Meanwhile, pending this suit, in the 3<sup>rd</sup> week of October 2024, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents/Defendants have constructed a tin sheet over the 2<sup>nd</sup> item of the suit property by encroaching the same to an extent of 16 feet in the East-West and 12 feet in the North-South, when the Plaintiff was not in the village. When the Plaintiff/Petitioner returned to her village and asked the Defendants/Respondents No.1 and 2 to remove the tin sheet constructed by them over the 2<sup>nd</sup> item of the suit property, the Respondents No.1 and 2 have agreed to remove the said tin sheet but till this date they have not done so. Therefore, it is necessary for this Petitioner to amend the prayer of the above suit for the reasons above stated. Hence this petition.

**Brief averments in the counter objection filed by the Respondents No. 3 to 5:**

9) This petition is unsustainable either in law or on facts and the Petitioner is not entitled to the relief sought for. All the allegations stated in the petition affidavit are all false and this Petitioner is bound to prove them all. The above suit has been filed by the Petitioner/Plaintiff during the year of 2014 and now this petition has been filed in order to amend the prayer for the relief of declaration of the “B” schedule property and for the removal of encroachments over the same and for the recovery of the same and it is not at all maintainable.

10) In fact on 28.11.2022, when the above suit was posted for Plaintiff’s side evidence, due to the non appearance of the Plaintiff, the above suit was dismissed for default by this Court and again the same was restored upon the application filed by the Petitioner. In such circumstances, this petition has been filed again to drag on the proceedings and the same is liable to be dismissed. Without giving any proper

pleadings this petition has been filed, this petition has no prima facie and it is to be dismissed in limine.

**Evidence:**

11) There is no oral and documentary evidence adduced on either side.

**Points for determination:**

12) Whether the Petitioner is entitled to amend the plaint in the above suit in O.S.No. 54/2014?

**Discussion:**

13) Heard both sides. Perused records. Upon perusal of records, it is seen clear that the above suit has been filed by the Petitioner/Plaintiff against the Defendants/Respondents for the relief of Permanent Injunction in respect of the suit property in S.F.No. 311/1A and 312/1 and for the relief of Permanent Injunction against the Defendants No.3 to 5 thereby restraining them from altering the revenue records in respect of the suit property. It is the case of the Petitioner/Plaintiff that the suit property in the above survey numbers absolutely belong to her and Patta for the same are standing in the name of this Petitioner. The Petitioner also claimed to have been in the possession and enjoyment of the suit property both in S.F.No.311/1A and 312/1. It was also alleged by this Petitioner that pending this suit, the Respondents /the Defendants No.1 and 2 have encroached the 2<sup>nd</sup> item of the suit property by way of constructing a tin house therein when this Petitioner was not in the village and they are evading from removing the said tin sheet. Hence this petition has been filed by the Petitioner in order to amend the prayer in the above suit for the relief of declaration in respect of the 2<sup>nd</sup> item of the suit property, for the relief of Mandatory Injunction for removal of encroachment therein and for the recovery of possession of the same.

14) Per contra, it is the case of the Defendants No. 1 and 2/Respondents No.1 and 2 in the above suit is that they have been given a HSD Patta in the same survey number

in S.F.No.312/1 and hence joint Patta has been rightly given to the 1<sup>st</sup> Defendant. However, these Defendants No. 1 and 2 have failed to proceed with this petition by the filing counter and hence they were set exparte.

15) On the other hand, the major objection placed by the Respondents No.3 to 5 herein is that the Petitioner has filed this petition without any proper reason and in order to drag on the proceedings of the above suit. It was also alleged by the Respondents No.3 to 5 that the above suit was filed in the year of 2014 and meanwhile due to the non appearance of the Plaintiff the said suit was dismissed for default 28.11.2022 and thereafter it was restored. Again in order to delay the proceedings, this petition has been filed and hence sought this Court to dismiss this petition.

16) This being the case, it is seen clear that a fresh cause of action in respect of the encroachment made by the Respondents No.1 and 2 over the 2<sup>nd</sup> item of the suit property was accrued pending this suit and hence this petition has been filed to amend the relief in the above suit. On the side of the Respondents No.1 and 2, to disprove and contested the case of this Petitioner regarding the said encrochments, no counter has been filed and they were remained uncontested and set exparte. Also there is no strong denial on the side of the Respondents No. 3 to 5, rather there main contention was that this petition has been filed to drag on the proceedings with false allegations. This apart, it is seen that there is a rival claim in respect of the possession of both the parties over the 2<sup>nd</sup> item of the suit property.

17) Therefore, this Court is of the considered view that as to the question of title over the 2<sup>nd</sup> item of the suit property and also know about whether there exists any encroachment which is alleged to have been made by the Respondents No.1 and 2 over the same, the same cannot be decided here and they are all to be decided only at the time of trial and after letting in evidence, both oral and documentary by both the parties. Opportunities must be given to both the parties in order to prove their respective cases. However, the same can be done only through a proper trial. For the

same, this Court is of the view to allow this petition to amend the plaint in the above suit as sought for by the Petitioner in this petition. This Court also ensures that no prejudice will be caused to the Respondents herein, if this petition is allowed.

**Result:**

In the result, for all the reasons stated above and in the interest of justice and on merits, this petition is allowed. No costs.

Dictated to my Steno-Typist, taken down by her in short notes, typed by her in the Court Computer, corrected by me and pronounced by me in the open Court on this the 16<sup>th</sup> day of July 2025.

**Sd/-A.Yughathymariya**  
**Additional District Munsif,**  
**Kulithalai.**

Petitioner side witness and documents - Nil.  
Respondents side witness and documents - Nil.

**Sd/-A.Yughathymariya**  
**Additional District Munsif,**  
**Kulithalai.**

