

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

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

**Additional District Munsif, Kulithalai.**

**Dated Friday, the 18<sup>th</sup> day of July 2025**

**I.A No.05/2025 in O.S No.148/2023**

Venkatachalam

**.....Petitioner/Defendant**

**/Vs/**

1) Govindaraju

2) Venkatachalam

3) Natesan

**.....Respondants/Plaintiffs**

This petition has come up for final hearing on 08.07.2025 before this Court in the presence of Thiru.R.Krishnasamy, the Learned Counsel appearing for the Petitioner and in the presence of Thiru.S.Parthiban, the Learned Counsel appearing for the Respondents No.1 to 3 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 under Order 6, Rule 17 of CPC in order to amend the written statement/counter claim filed by the Petitioner/Defendant in the above suit.

**Brief averments in the affidavit:**

2) The Petitioner is the Defendant in the above suit. The Respondents have filed the above suit for Permanent Injunction in respect of three items of the properties, wherein this Petitioner/Defendant had filed a written statement with counter claim in respect of three schedules of the property namely A, B and C schedules. This Petitioner/Defendant have also filed a rough plan with the written statement wherein a pipeline was

specifically shown in red color in that plan and it was shown in the property in S.F.No.455/7 and S.F.No.455/5B. In the counter claim, this Petitioner/Defendant had prayed for the relief of Mandatory Injunction in respect of the “C” schedule property found therein. The “C” schedule property is the pipeline which is situated in S.F.No.455/5B of Pannapatti Village. However, by mistake the S.F.No.455/2B has been mentioned in the 2<sup>nd</sup> line of the “C” schedule in the written statement rather S.F.No.455/5B. It is a mistake in the description of the property with reference to the sub division number and it is to be corrected in the interest of justice. The amendment will not change the nature and character of the defence. The Respondents have filed an application for an appointment of commissioner. Though the commissioner was appointed by this Court, the Respondents have not taken any steps to locate the property and hence this Court was pleased to close that petition. If this amendment is not allowed, the Petitioner will be put to irreparable loss and hardships. It is necessary to amend the written statement. Hence this petition.

**Brief averments in the counter filed by the 2<sup>nd</sup> Respondent and adopted by the Respondents No. 1 and 3:**

3) This petition is legally unsustainable. This petition has been filed in order to delay the proceedings when the above suit was posted for trial. The reason stated by the Petitioner in the petition affidavit is not acceptable and they are to be proved by the Petitioner with corresponding documents. In the above suit, issues have been framed by this Court and at this stage, this petition to amend the description of the property in the counter claim would affect the nature of the suit. The short cause title and the long cause title in this petition are not correct. The Petitioner is not entitled to the relief as prayed for. Hence this petition is liable to be dismissed.

**Evidence:**

4) There is no oral and documentary evidence adduced on either sides.

**Points for determination:**

5) Whether the Petitioner is entitled to amend the counter claim as prayed for?

**Discussion:**

6) Heard both sides. Perused records. Upon perusal, it is seen that the above suit has been filed by the Respondents/Plaintiffs for the relief of Permanent Injunction against the Defendant/Petitioner herein, in respect of the plaint schedule property. However, the Defendant/ the Petitioner herein had claimed relives in the written statement by way of counter claim for Permanent Injunction in respect of the property comprised in S.F.No.455/4 and S.F.No.455/7 and for the relief of Mandatory Injunction directing the Plaintiffs to restore the pipeline in the property in S.F.No.455/5B to its original position. Upon perusal of the counter claim, it is also seen clear that in the schedule of property under the “C” schedule, in the 2<sup>nd</sup> line S.F.No.455/2B was mentioned. However, in the 1<sup>st</sup> line it was mentioned as S.F.No.455/5B. Apparently, it is seen that it is the typographical error as stated by this Petitioner. However, the main objection placed by the Respondents/ the Plaintiff in their counter is that the above suit was ripened for trial and at this stage this petition has been filed in order to drag on the proceedings. Also, it was stated by the Respondents that the reasons stated by the Petitioner in the petition affidavit is not acceptable and he is bound to prove the same with the help of documentary evidence and if this amendment is allowed by this Court, it would definitely change the nature and character of the suit.

7) At this juncture, it is pertinent to rely upon Order 6 Rule 17 of CPC which provided that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and such term as may be just, and all such amendment shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. It was also provided therein that no such applications shall be allowed after the trial has commenced, unless the Court comes to

the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of the trial.

8) From the bare perusal of the above provision, it is very clear that even after trial has commenced, amendment can be made provided the Court comes to the conclusion that inspite of the due diligence the party could not have the raised the matter before the commencement of the trial. However, upon perusal of records, it is seen very clear that the amendment as sought for by this Petitioner in the description of property in the counter claim is seem to be only a typographical mistake that was made, for which there is no strong objection on the side of the Respondents. This Court is of the view that the trial has not yet commenced in the above suit. Only the issues have been framed and this matter is admittedly posted for trial. At this stage, this petition has been filed. Therefore, this Court is of the considered view that the amendment sought for in this petition is necessary for the purpose of determining the real questions in controversy between the parties and this Court has not seen any negligence on the side of the Petitioner in not raising this matter before the commencement of the trial. Also, this Court is satisfied that if this petition is allowed, it would no way affect the rights of the Respondents herein, rather it would be an opportunity for the Respondents to contest the case and the claim raised by the Defendant/Petitioner. This Court also ensures that by way of this amendment, neither the nature of the suit nor the nature of the counter claim would be changed. Therefore, this Court is inclined to allow this petition in the interest of justice and on merits.

**Result:**

In the result, for all the reasons stated above, 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 18<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.**

