

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, KULITHALAI

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

Additional District Munsif, Kulithalai.

Dated Monday, the 09th day of June 2025

I.A No.02/2025 in IA.No.676/2019 in O.S No.174/2019

1) Krishnan

2) Selvaraj

...Petitioners /Plaintiffs

- Vs -

1) Malaya Gounder

2) Veerapandiyan

3) Manickam

...Respondents/ Defendants

This petition has come up for final hearing before this court in the presence of Mr.R.M.Senthil, the Learned Counsel appearing for the Petitioner and the presence of Mr.K.S.M.Sagul Hameed, the Learned Counsel appearing for the 2nd and 3rd Respondents and 1st Respondent remained exparte and upon hearing the both side enquiry, upon perusal of material records and having stood over for consideration till this day, this court delivers the following:

ORDER

1. This petition has been filed by the 1st Petitioner/ 1st Plaintiff under Order 6 Rule 17 and Section 151 of CPC to amend the Commission petition in I.A.No.676/2017 in O.S.No.174/2019.

2. The 1st Respondent was served notice, called absent and hence he was set exparte.

Brief averments in the Affidavit are as follows:-

3. The petitioner states that he is the plaintiff in the above suit. That he had filed a suit for Permanent injunction against the Defendants/Respondents. He had filed a commission petition in this case for the proof of identification of the suit property and the said petition was allowed by this court. When the commissioner and other Government officials inspected the suit property according to the commission warrant, the property was identified into the boosthuthi but the Respondents counsel strictly denied the survey Number of the suit property in the commission warrant as not correct.

4. The description of the suit property mentioned in the plaint is correct but the whole natham survey number was mentioned. After that, more number of sub-divisions were allotted by the government for which now the suit property survey number is derived from old S.F.No. 1815/10 as natham into the new S.F.No.1815/52 to an extent of Acre 0.08 3/4 cents and S.F.No.1815/53 to an extent of Acre 0.03 1/2 cents in which the suit property is situated and identified within this limit of survey number. The Four boundaries and the old S.F.No.1815/10 in respect of the suit property are correct. But, the commissioner could not measure the suit property for want of the new sub-divisison number of the suit property and the commissioner filed a memo before this Court regarding the same. Hence this petition is filed to amend the commission petition in respect of the description of the suit property. No prejudice will be caused to the respondents by allowing this application. If this application is not allowed he will be greatly prejudiced and put to serious loss and hardships. Hence this petition.

Brief avarnments in the Counter filed by the 2nd Respondent :-

5. The allegations in the amendment petition and affidavit are all false, frivolous and vexatious and unsustainable in law and on facts. The allegation that the suit property is now situated in S.F.No.1815/52 and S.F.No.1815/53 with definite four boundaries as mentioned in the plaint are all false and denied. There is no such property in boosthuthi. The patta in S.F.No.1815/53 stands in the name of Malaya Gounder and Kaliyappa Gounder in Patta No.1088.

6. The 2nd Respondent / 2nd defendant has purchased the property to an extent of 829 sq.ft out of 0.01.54 in S.F.No.1815/53 from Malaya Gounder through a registered sale deed dated 28.12.2012. The Malaya Gounder got the property through oral partition between himself and Kaliyappa Gounder.

7. The Commissioner who was appointed by this Court had inspected the suit property and found that there is no such property as shown in the description of the property in the above suit on boosthuthi and therefore, he could not measure such imaginary property and subsequently the commissioner had filed a memo before this Court regarding the same.

8. Suppressing the above facts the petitioners have filed this petition to the amend the description of suit property by adding imaginary survey numbers in S.F.No.1815/52 and S.F.No.1815/53 which are not belong to the petitioners. If this petition is allowed, the Respondents/Defendants will be put to much loss and hardships. After filing of the Written Statement by this Respondent in the above suit and filing of the suit by this respondent in O.S.No.206/2019, The petitioners/Plaintiffs are setting up a new case in order to grab the property belong to the respondents/ Defendants. Hence this petition is not maintainable and liable to be dismissed.

Points to be determined:-

9. Whether the petitioner is entitled to amend the commission petition I.A.No.676/2019 in O.S. No.174/2019 as prayed for?

Evidence:-

10. No oral and documentary evidence were adduced on either side.

Points:-

11. The petitioner has filed this petition to amend the commission petition I.A.No.676/2019 in O.S. No.174/2019, thereby amending the description of the suit property from S.F.No.1815/10 into "Old natham S.F.No.1815/10" and also to include "new sub division S.F.No.1815/52 an extent of Acre 0.08 $\frac{3}{4}$ cents and S.F.No.1815/53 an extent of Acre 0.03 $\frac{1}{2}$ cents in which an extent of Acre 0.10 cents".

12. It is the case of the petitioner that the suit property is originally started as Paimash Number, further it was modified and now the suit property is situated in S.F.No.1815/52 and S.F.No.1815/53 in which the petitioner has got the property with an extent of Acre 0.10 cents with definite four boundaries as mentioned in the plaint.

13. It is also seen that as stated by the petitioner, the commission petition in order to measure the suit property was allowed. The 1st Respondent was served notice, called absent and hence he was set exparte. by this Court and the petitioner further stated that the property was identified into boosthuthi but the respondent counsel strictly denied the Survey number of the property as wrong for which the commissioner had not measured the suit property and filed a memo before this Court. It is the case of the petitioner that the suit property is derived from old S.F.No.1815/10 as natham into new S.F.No.1815/52 and S.F.No.1815/53 to an extent of Acre 0.08 $\frac{3}{4}$ cents and Acre 0.03 $\frac{1}{2}$ cents respectively in which the suit property is situated within the limits of Survey number.

14. On the other hand, the 2nd respondent / 2nd Defendant has vehemently opposed the allegations found in the petition affidavit and contends that the patta in S.F.No.1815/53 stand in the name of Malaya Gounder and Kaliyappa Gounder in Manaivari Patta No.1088. The 2nd defendant purchased the property in S.F.No.1815/53 to an extent of 829 sq.ft out of 0.01.54 from Malaya Gounder through a registered sale deed dated 28.11.2012 and the said Malaya Gounder had got the property through oral partition between himself and Kaliyappa Gounder. It is also the contention of the 2nd respondent that the commissioner who was appointed by this Court could not be able to find out such suit property on boosthuthi and therefore the commissioner could not measure such imaginary property and hence filed a memo.

15. Upon perusal of the pleadings of both the parties, it is seen that the above suit was filed by the petitioner/Plaintiff for the relief of Permanent Injunction against the defendants/respondents herein from interfering with the plaintiff's possession and enjoyment over the suit property and the above commission petition was filed by the petitioner in order to measure the suit property to prove his case, which was allowed by this Court. As stated by the petitioner, in the description of property, natham S.F.No.1815/10 is mentioned, wherein, the plaintiff/petitioner herein contended that the suit property was originally belonged to the fathert of the 1st Plaintiff who purchased it by way of a registered sale deed dated 16.10.1946 and after his demise, the 1st Plaintiff and 2nd Plaintiff are in possession and enjoyment of the suit property till now and it is the defendants who are disturbing the plaintiffs' possesssion over the suit property.

16. On the other hand, the 2nd Defendant /2nd respondent in his written statement strongly denied the allegation made by the plaintiff that the suit property belongs to the plaintiff. It is the case of the 2nd Defendant /2nd respondent in the above suit that in the sale deed as alleged by the plaintiff, Paimash No.840 and 839 alone are

mentioned and they are not at all related to old natham S.F.No.1815/10. Also, no documents were filed by the plaintiffs in order to co-relate the said paimash numbers with old natham survey number. The defendant also stated that the property in S.F.No.1815/10 is sub-divided into many survey numbers and the property in S.F.No.1815/52 and S.F.No.1815/53 belongs to the 2nd Defendant. In order to grab the property of the 2nd defendant, the plaintiff has filed the above suit.

17. Being so, this court also perused the memo filed by the commissioner in which it was stated that the property in S.F.No.1815/10 is comprised of Acre 2.14 cents in total, in which the said survey number is now sub-divided into many natham survey numbers, wherein the commissioner warrant does not specify about the exact subdivision number of the suit property in order to measure the same, for which the defendant counsel objected.

18. The scope of Order 6 Rule 17 is that the court may at any stage of the proceedings allow either party to amend the pleadings when such amendment is necessary for the purpose of determining the real questions in controversy between the parties. The provision also states that no such application shall be allowed after the commencement of the trial unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial.

19. At this juncture, this court is of the considered view that as admitted by both the parties, the property in S.F.No.1815/10 has been sub-divided into many survey numbers. The petitioner / Plaintiff claims the suit property in old S.F.No.1815/10 belongs to him and it is now sub-divided into S.F.No.1815/52 and S.F.No.1815/53 and hence he wants to amend the property description in the commission petition as well so as to measure the same and to find out the encroachment. Wherein, the 2nd respondent/ 2nd defendant claims that the property in S.F.No.1815/52 and S.F.No.1815/53 belongs to him and hence he strongly objects to allow this petition to

amend the description of the suit property. This Court feels that there exists a rival claim in respect of the title over the suit property between the parties herein. Such question of title and other claims regarding the same will be decided only at the time of trial after letting of evidence by both the parties. At the same time, separate issues regarding the same had also been framed by this Court at the time of framing of issues.

20. Therefore, this Court comes to the conclusion that in order to measure the suit property, it is necessary to amend the description of the suit property, when the suit property is sub-divided over a period of time. This Court is also of the view that by allowing this application it would no way affect the nature of the suit and if this petition is allowed, the respondents would no way get prejudiced. Hence, this court is inclined to allow this petition.

Result:-

In result, this petition is allowed. No costs.

Dictated to my typist, directly typed by her in the Court computer, corrected by me and pronounced by me in the open Court on this the 09th day of June 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.**

