

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF, THIRUMANGALAM

Present: Thiru. C.Dineshkumar, M.A., B.L.,

Principal District Munsif, Thirumangalam

Thursday, the 6th day of March 2025

I.A. No. 276/2022

in

O.S. No.288/2009

Periyazhvar

... Petitioner /Plaintiff

- Vs -

1. Mohammed Rabi

2. Ashok

... Respondents / Defendants

This Petition coming before me for final hearing in the presence of Counsel Mr.P.G. Alagarsamy, Advocate for the Petitioner/Plaintiff and Mr.A.Tamilselvam, Advocate for the 1st Respondent/ Defendant, while the 2nd Respondent has remained exparte and upon perusing the Petition, counter and the entire materials available on the records before this Court and having stood over for consideration till this day, this Court delivers the following

ORDER

This petition has been filed under Order 6 Rule 17 of C.P.C. to amend the Plaintiff.

2) THE POINT FOR DETERMINATION:

Whether this Petition has to be allowed or not?

3) The entire case records were perused carefully and both the sides were heard.

4) ARGUMENTS:

4.1 The learned Counsel for the Petitioner/ Plaintiff argued that the Defendants have blocked the pathway of the Plaintiff and has constructed a compound wall in the month of August 2012 and therefore, the plaint has to be amended and the prayer of recovery of possession has to be added and prayed for allowing this application.

4.2 On the other hand, the learned counsel for the Respondents argued that already an application for amending the plaint for including the prayer of declaration and mandatory injunction was filed in IA No.439/2019 and the same was dismissed by this court and thereafter, the petitioner preferred CRP in CRP(PD)(MD)No.812/2020 and the same was also dismissed by the Hon'ble High Court and hence, this petition has been filed again with a same prayer and therefore, this petition is not maintainable and prayed for dismissal.

5. This petition has been filed for removing the prayer of Permanent Injunction and for including the prayer of recovery of possession instead and for including the pleadings regarding the construction of compound wall by way of amendment. On perusal of records, it could be seen that the trial has been commenced in this case and the same is pending for examination of further plaintiff side witness. Therefore, amendment of pleadings cannot be permitted, unless the petitioner side show that he could not raise the matter before the commencement of trial, inspite of due diligence.

6. On perusal of records, it could be seen that the trial has been commenced in this case only in October, 2016 but petitioner has stated in the affidavit that the Respondents have blocked the pathway of the Plaintiff and has constructed a compound wall in the month of August, 2012 itself. However, the petitioner has not stated any reason for not raising the matter for four years before the commencement of trial.

7. Further, perusal of records reveal that the petitioner has filed an application already for amending the plaint for including the prayer of declaration and mandatory injunction to remove the compound wall in IA No.439/2019 and the same has been dismissed by this court and the revision preferred by the petitioner in CRP in C.R.P. (PD)(MD)No.812/2020 has also been dismissed by the Hon'ble High Court. However, the petitioner has filed this application with a prayer of Mandatory Injunction to remove the compound wall stating that the wall has been erected during the pendency of this suit, which has been already sought for in the previous application.

8. However, the petitioner has not stated anything in this application regarding the previous application filed by the petitioner for amendment of plaint and the revision preferred by the petitioner before the Hon'ble High Court. Therefore, this court is of the opinion that the petitioner has filed this application suppressing the previous applications.

9. Further, mere inclusion of pleading regarding the construction of compound wall in the plaint pleadings can not be a ground for amending the prayer after the commencement of trial. It is a settled proposition that amendment of pleadings cannot be permitted after the commencement of trial, unless the petitioner side show that he could not raise the matter before the commencement of trial, inspite of due diligence. However, this petition has been filed without stating any reason for not taking steps to amend the plaint before the commencement of trial. Therefore, this court is of the opinion that, the petitioner has failed to show that inspite of due diligence, the petitioner could not raise the plea of amendment before the commencement of trial.

10. Hence, as the petitioner has failed to show that inspite of due diligence, the petitioner could not raise the plea of amendment, from August 2012 till October 2016, before the commencement of trial and as the previous applications for the amendment of plaint for including the prayer of Mandatory Injunction to remove the compound wall has been suppressed by the petitioner in this application, this court is not inclined to allow this application.

As a result, this Petition is dismissed. No cost.

Dictated by me to the typist directly in the office computer and the same was corrected by me and pronounced in the open Court on this 6th day of March, 2025.

Principal District Munsif
Thirumangalam

I.A. No.276/2022
in
O.S. No.288/2009
Fair Order
D.O.D.06.03.2025