

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF, THIRUMANGALAM

Present: Thiru. C.Dineshkumar, M.A., B.L.,  
Principal District Munsif, Thirumangalam

Friday 4<sup>th</sup> day of November 2022

I.A. No.300/2020

in

O.S. No.486/2013

P.Kaliappan ... Petitioner/ Plaintiff

-Vs-

1. The District Collector,  
Madurai.
2. The Commissioner,  
Thirumangalam Municipality.
3. Parameswari ... Respondents /Defendants

This Petition coming on 17.10.2022 before me for final hearing in the presence of Counsel Thiru.S.Srinivasa Babu, Advocate for the Petitioner/Plaintiff and Thiru.N.Namasivayam, Advocate for the 3<sup>rd</sup> Respondent/ 3<sup>rd</sup> Defendant and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents having remained exparte in the main suit itself 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**

The Petitioner has filed this Petition to amend the plaint with respect to the extent of the alleged encroachment in the Suit property.

#### **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 Petitioner did not know about the correct extent of the encroachment made by the 3<sup>rd</sup> Defendant at the time of filing the suit and thus, the extent of encroachment was not mentioned in the plaint and the Petitioner came to know about the correct extent only when the Advocate commissioner filed the report and thus, necessary amendment shall be made in the schedule of property as per the commissioner report.

4.2 On the other hand, the learned counsel for the respondent argued that already a civil suit in O.S.No.131/2000 was filed by one Sethuraman @ Pandi against this respondent and the extent of common path way has been already decided and the petitioner is the neighbor to the parties of the previous suit and therefore, he is aware of the earlier proceeding and he has filed this suit by suppressing the above facts and prayed for dismissal.

5. It is a settled proposition that the pleadings of the case can be amended at any stage, if such amendment does not alter the nature of the case. This case has been filed for declaration of plaintiff's pathway rights and consequential relief of Mandatory injunction directing the Defendants to remove the encroachment made in the pathway.

6. This petition has been filed to amend the schedule of property with respect to the extent of the encroachment. On perusal of records, it could be seen that the averments of the schedule of property in the plaint contains that there is encroachment in the suit property and therefore, including the extent of such encroachment, as stated by the Advocate commissioner in the commissioner's report, will not alter the nature of the suit.

7. Further, the contention of the Respondents that the petitioner knows about the previous suit and its finding cannot be accepted, as he was not a party to that suit

and therefore, this court does not find any valid reason to dismiss this application and as the amendment of the extent of the encroachment will not alter the nature of the Suit, this court is inclined to allow this application.

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

Dictated by me to the Steno-typist directly in the office computer and the same was corrected by me and pronounced in the open Court on this 4<sup>th</sup> day of November 2022.

(Sd.C.Dineshkumar)  
Principal District Munsif  
Thirumangalam

I.A.No.300/2020  
in  
O.S.No.486/2013  
Fair Order  
D.D. 04.11.2022