

IN THE COURT OF THE DISTRICT MUNSIF, MELUR.

Present: Thiru.S.MUTHUKRISHNA MURALIDAS, M.A.M.L.,

DISTRICT MUNSIF, MELUR

Monday, the 06<sup>th</sup> day of January 2025

I.A No. 5/2024

in

O.S No.190/2019

S. Moses Dayan

... Petitioner / Plaintiff

.Vs.

1. E.M. Gopalakrishnan Kone Trust

Represented through its Trustee

Mrs. E.M.G.Indrani.

2. E.M.G.S. Arun Pothiraj

... Respondents/Defendants

This petition has been coming before this court for final hearing on 19.12.2024 in the presence of Thiru. A.Haja Mohideen, Advocate for the Petitioner/Plaintiff and Thiru. M. Jeyaraman, Advocate for the Respondents/Defendants and upon hearing the argument on both side and having stood over for consideration till this date, this court delivered the following...

### **ORDER**

1. The petitioner/plaintiff has filed this petition under Or.6 Rule 17 C.P.C to amend the plaint by inserting a new relief of declaration of the

title with respect to the suit property and for consequential relief of recovery of possession and other connected amendments.

2. The case of the petitioner is that he is the absolute owner of the suit property by virtue of sale deed dated 09.07.2007. Since then the plaintiff is in possession and enjoyment of the suit property and on 17.09.2019 when the defendants attempted to trespass in to the suit property which has been thwarted by the petitioner with the help of neighbors. Consequently, this petitioner has laid the main suit in O.S.No.190/2019 against the respondent/ defendant for seeking the relief of permanent injunction restraining the defendants their agents, servants from any way interfering with the plaintiff's peaceful possession and enjoyment of the suit property except under due process of law. Now the suit is at the stage of let in evidence on the side of the defendant. At this stage, this petition came to be filed to amend the plaint relief by inserting declaration of title and recovery of possession by stating that the defendants illegally trespassed into the suit property and claiming the suit property as the 2nd defendant's school playground.

3. On the other hand, the respondents/defendants would contended that at the time of filing of suit the plaintiff alleged that he is in the possession of the suit property. The petitioner has no right or title over the suit property and he is not in possession of the suit property at any time. At this juncture, when the suit is posted for defendants' side evidence, this petition came to be filed for seeking to insert declaration of title over the suit property and recovery of possession admitting that the possession of the property is on the hands of the defendants. Further contention is that the declaratory relief sought to be inserted in the plaint

is barred by law of limitation when the plaintiff alleged to have purchased the suit property in the year 1997. Hence the respondents strongly opposed to allow this application.

4. Heard bothside and perused the entire records.

5. Now the point to be determined is whether it is permissible to convert through amendment a suit merely for permanent injunction into a suit for declaration of title and recovery of possession.

6. In the present case, suit was laid on 25.10.2019. The plaint averments shows that the plaintiff has purchased the suit property on 09.07.2007. Since then he is possession and enjoyment of the suit property and he putup iron barbed fencing for his property. Therefore, it shows that according to the petitioner/plaintiff at the time of filing of the suit he is in possession of the suit property. Now the main case stands posted for examining defendants' side evidence. This petitioner stated that the respondents/defendants without any valid documents denying the title of the plaintiff and so the plaintiff is constrained to file this application to insert a new relief of declaration of title. However the petitioner has not whispered anything about the dis-possession of the plaintiff from the suit property by the defendants during the pendency of the suit. The particulars of amendment does not show any fact particularly the date on which the defendants illegally trespassed into the suit property. Therefore the fact stated in the plaint that at the time of filing of suit the plaintiff is in possession of the suit property is totally in consistent with the fact raised in this petition that the defendants had illegally trespassed into the suit property. The later part of the fact is destructive in nature. It is settled position of law that the plaintiff can not

take inconsistent plea which would destruct the nature of the suit. In ***Gurusamy Gounder /Vs/ Muthuchamy Gounder 1999 3MLJ 379*** the Hon'ble High Court of Madras held that what the plaintiff wants is to raise an inconsistent plea to what he has already raised and if the amendment is allowed, it will amount to allowing plaintiff to withdraw the admission which he has already made, which will cause manifest injustice to the defendant.

7. The above referred judgment of Gurusamy Gounder case, squarely applicable to the present facts of the case. In this case also the plaintiff has already admitted in his plaint that he is in the possession of the suit property at the time of filing of the suit. Now the plaintiff stated that the defendants illegally encroached the suit property and possession of the suit property is in the hands of the defendants. It is not the case of the petitioner/plaintiff that after filing of the suit on a specific date this defendants illegally encroached into the suit property. Therefore, the petitioner/plaintiff is not permitted to withdraw his earlier admission that he is the possession of the suit property and so if the amendment regarding insertion of relief of declaration of title and recovery of possession is allowed, it would destruct the earlier plea and introduce new inconsistent plea which would cause injustice to the defendants. However amendment sought with respect to the original petition number 35/1997 has to be replaced by 35/1967 is permissible because there is no objection raised by the other side and also it is mere a typographical error.

8. From the above discussions this court is inclined to allow this application partly by,

(a) permitting the petitioner to amend the plaint by replacing **“original petition number 35/1967”** instead of **“original petition number 35/1997”** in paragraph No.6 of the plaint.

(b) rejecting the amendments regarding amendment particulars 2 to 7 shown in the petition.

This order is dictated to Steno-Typist and typed by him, corrected and pronounced by me in open court, this the 06<sup>th</sup> day of January 2025.

District Munsif  
Melur.

List of Witnessess on the side of petitioner : Nil

List of Documents on the side of Petitioner: Nil

List of Witnessess on the side of respondent : Nil

List of Documents on the side of Respondent: Nil

District Munsif  
Melur.

IA No.5/2024

in

OS. No.190/2019

Fair/Draft Order ,

Date: 06.01.2025