

IN THE COURT OF DISTRICT MUNSIF, VADIPATTI, MADURAI DT.

Present: Tmt. S. Vengadalakshmi M.L.,  
District Munsif.(FAC)

**Date: 10.08.2023**

...

I.A.No. 01/2023

in

IA.No. 430/2019

in

O.S.No.73/2019

N. Pushpam : Petitioner/Petitioner/Plaintiff

//Versus//

1. Amirthavallai

2. J. Rajendran

: Petitioner/Petitioner/Plaintiff

This petition is filed before this court and it was taken on 16.03.2023 and Advocate Thiru.N. Rajaji appeared for the Petitioner/Petitioner/Plaintiff and the Advocate G.M.Ramani appeared for the Petitioner/Petitioner/Plaintiff and this petition came before me for final hearing on 05.08.2023, Upon hearing the arguments advanced on both sides, upon perusing the available material records and having stood over for consideration till this day, today this court delivered the following...

**ORDER**

1. This petition is filed under Order VI Rule 17 of CPC to amend the petition filed in IA.No. 430/2019 in OS.No. 73/2019.

2. Details of Amendment:

1. அபிடவிட்டில் கண்டுள்ள பாரா 4ல், கிழமேல் ஜாதியடி 45 வீதம் மொத்தம் 84 என்பதை நீக்கம் செய்துவிடவேண்டும். கிழமேல் ஜாதியடி 45 வீதம் என்பதை மொத்தம் 90 என திருத்தம் செய்ய வேண்டியது.

2. பாரா 4ல் 15வது வரியில் வாதியின் வீட்டுச்சுவரும் பாதிக்கப்படும் அபாயம் உள்ளது என்பதற்கு அடுத்து "இம்மனுவில் கண்டுள்ள எதிர்மனுதாரருக்கு பாத்தியப்பட்ட 3வது லக்கச்சொத்தினை சேர்ந்து அளந்தால் மட்டுமே" என சேர்க்க வேண்டியது.

3. மேற்படி IA.No. 430/2019 மனுவில் 2வது சகநககககககககககலக்க சொத்திற்கு பின் கீழ்க்கண்ட 3வது லக்கச்சொத்தாக சேர்க்க வேண்டியது.

"3. மதுரை டி, மதுரை வடக்கு ரீடி, வாடிப்பட்டி சட்டி, வாடிப்பட்டி வட்டம் 3 நிர் கச்சைக்கட்டி கிராமம், உட்கடை செமினிப்பட்டி நத்தங்குடியிருப்பு, நத்தம் பழைய சர்வே எண் 713/1 நிர்க்கு நத்தம் நிலவரி மனைப்பட்டாபடி ரீசர்வே எண். 1698/37 நிர்வில் கிழமேல் அடி 20, தென்வடல் அடி 43க்கு 860 சதுரடி இடத்திற்கு நான்குமால் விபரம்"

மந்தை திடலுக்கும் - மேற்கு

கிழமேல் வீதிக்கும் தெற்கு

நல்லமரெட்டியார் வீட்டுக்கும் பாதைக்கும் - வடக்கு

சிங்கமரெட்டியார் சின்னராஜ் வகையறா இவர்கள் இடங்களுக்கும் - கிழக்கு  
இதற்குள்பட்ட 860 சதுரடி

3. **Brief case of the petitioner:** The petitioner has already filed the IA.No. 430/2019 seeking for the relief of appointment of Advocate commissioner and the same was found dismissed by this court and against which the revision petition was preferred by this petitioner before Hon'ble Madurai Bench of Madras High Court and obtained positive order on 02.08.2022 by set a side the order of dismissal passed by this court. Hence, the inclusion of 3<sup>rd</sup> item of property, which is the defendants property to include the schedule for the purpose of inspection of the same to ascertain the encroachment level in the plaintiffs property. Accordingly prayed for the present amendment petition to be allowed.
4. **The brief case of the respondent :** The present petition is not at all maintainable and liable to be dismissed. It is true that, IA.No. 430/2019 was found dismissed by this court on 12.09.2019 against which the present petitioner has preferred revision before Hon'ble Madurai Bench of Madras High Court and the revision petition was allowed on 02.08.2022 just to decide the application on merit. The earlier application was filed only for 2 item of properties. But, after the revision petition with malafide intention, the present petitioner has illegally added the 3<sup>rd</sup> item of property in the main suit schedule, in which the plaintiff has no right at all. The fraudulent amendment was included by projecting the same as the amendment proposed by check slip. After filing of APC again and again returned by this court for various hearings and by some un-known means it was found correct on 16.03.2023 and taken on file. Hence, the present petition is not at all maintainable and liable to be dismissed as the defendants property shall not be added in the present petition. Accordingly, the present petition is liable to be dismissed.
5. The point to be decided is whether the present application seeking for the amendment in the petition filed in IA.No. 430/2019 shall be allowed or not?
6. Heard both side counsels and considered relevant materials.
7. The respondents side has projected two documents which are the order in IA.No. 430/2019 and the docket order of the same IA. Both of the order shall not be taken in

to consideration in view of the revision petition order passed by Hon'ble Madurai Bench of Madras High Court dated 02.08.2022.

8. All the three points of amendment are claimed to be amended by expressing the fact that the proposed 3<sup>rd</sup> item of property in the schedule belongs to the defendants.
9. The counsel for the petitioner would submit, it is more necessary to include the property of the respondents/defendants as the present petitioner seeking for the rights of easementary which also includes to consider the extend of the respondents property. Hence, the present petition shall be allowed.
10. In the contrary, the counsel for the respondent would submit that the present petitioner who is the plaintiff has malafiedly amended the plaint vide IA.No. 218/2022 by including the property of the defendant, likewise making attempt to include the property of the defendant in this IA, which is filed for the relief of appointment of advocate commissioner. The earlier time in the year 2019, that IA.No. 430/2019 was found dismissed on the ground that survey number was not mentioned and the present petition shall not be permitted as there is no cause of action and there is no prayer in connected to the present proposed schedule of property,
11. Upon perusal and consideration of the case records, the original plaint is filed for the relief of mandatory injunction and claiming of easementary rights. All the allegations raised by the respondent to the present application is the certain amendments were made by the plaintiffs/petitioners in the original plaint without proper permission and made in the illegal means by suppression of certain facts and the same shall not be permitted. But all these allegations are not the point to be taken in to consideration for deciding the present application.
12. And moreover upon considering the fact that the schedule of property is stated as the property belongs to the respondents. The mere inclusion of the property of the respondents in the IA.No. 430/2019 which is for the relief of the appointment of advocate commissioner would not take away the right of the defendant at all and moreover, it is the belief of the petitioner that the adjacent land extent has also to be taken in to consideration for the purpose of inspection of the advocate commissioner

and the same shall be done only when the petition is amended with the schedule of property of the adjacent owner. But, it is not right belief it is the duty of the advocate commissioner to consider the plaintiff and the defendants property based on the plaint schedule and also on the title deeds produced by both side parties along with the support of revenue records.

13. It is found that the Hon'ble Madurai Bench of Madras High Court has passed time framed order that to dispose the IA.No. 430/2019 which is for the appointment of advocate Commissioner with in a period of 3 months from the date of receipt of the order. Hence, it is more necessary to dispose the IA.No. 430/2019 on or before 21.10.2023.
14. The inclusion of the schedule item No. 3 does not found mandatory to measure the defendants property. But at the same time, when the inclusion of the property in the schedule itself does not spoil the right of the respondents still the respondent is vehemently contesting the present application not to include the property. But, inclusion of the property of the respondent shall also taken in to consideration as a positive one as the measurements of the 3<sup>rd</sup> item of property shall also be taken in to consideration by the Advocate commissioner at the time of inspection if any.
15. Hence, on considering the present situation, and on considering the factum that the right of easementary is always connected to two properties which are dominant heritage and servient heritage. Hence, the inclusion of the property in the schedule would never take away the right of the respondent/defendants. Hence, on considering the above mentioned discussions the serious objection raised by the respondent is found to be un-wanted and found made only with intension to drag on the proceedings.
16. Hence, on considering the direction issued by the Hon'ble High Court and on considering the original plaint itself filed for the relief of the mandatory and injunction and easementary rights and present amendment petition vide IA.No. 01/2023 is not found un-necessary and hence, the present petition is allowed.
17. In view of the nature of the prayer, there is no order as to costs.
18. Accordingly, this petition is allowed. No order as to costs.

Dictated to the typist typed by her directly on the computer, corrected and pronounced by me in the open court this the 10<sup>th</sup> day of August 2023.

(Sd. S. Vengadalakshmi)  
District Munsif(FAC)  
Vadipatti.

**1) Petitioner side documents: Nil**

**2) Respondents side evidence and documents:**

Ex.R.1- Order of IA.No. 430/2019 dated 12.09.2019- Certified copy.

Ex.R2- Petition and order of IA.No. 430/2019 – Certified copy

(Sd. S. Vengadalakshmi)  
District Munsif(FAC)  
Vadipatti.

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