

**IN THE COURT OF DISTRICT MUNSIF, VADIPATTI, MADURAI DT.****Present : Thiru. M.P. Ramkishore, B.E., BL., (Hon's)**

District Munisf, Vadipatti

**Dated 06<sup>th</sup> day of August 2024****IA. No.01/2023****In****O.S. No.114/2016**

P. Rengaraju,  
S/o. R. T. Ponnadi,  
Mettupalayam Taluk,  
Coimbatore District.

**---- *Petitioner / Plaintiff******//Versus//***

1. Meena @ Devasena  
W/o. T.K. Chandrasekaran,  
Vadipatti Taluk, Madurai District.
2. State represented through  
The District Collector,  
Madurai District.

**---- *Respondents / Defendants***

This petition was filed before this Court on 25.04.2023 coming before me for final hearing on 06.08.2024 Advocate Thiru. S. Gobinath appeared for Petitioner / Plaintiff, Advocate Thiru. G.M. Ramani appeared for R1 / D1 and Learned Government Pleader appeared for R2 / D2. Upon perusing the available material records, today this Court has delivered the following....

**ORDER**

1. This petition was filed under order 6 rule 17 & Sec.151 of C.P.C. to amend the plaint.

**2. Petition averments in brief:**

The petition contention was that, the main suit was filed for declaration of title, permanent injunction and for mandatory injunction to remove Latrine and Septic tank that was built as encroachment. In the prayer part of plaint, the above encroachments were clearly mentioned. But, due to typographical error the above mentioned encroachments were not described in the plaint schedule. Thus, the petitioner / plaintiff filed this petition to amend the plaint.

**3. Counter averments in brief:**

i. The 1<sup>st</sup> respondent filed counter by denying the entire petition contentions and stated that this petition was filed after 8 years of filing this suit. The advocate commissioner report filed in this suit clearly shows that, the petitioner did not have any right in the suit property. This petition was filed to delay the suit and to harass this respondent. The petition was filed to correct typographical error which was not true. Thus, this petition must be dismissed.

ii. R2 did not file counter and did not raise any objection throughout the petition proceeding.

**4. Point for determination :** Whether this petition can be allowed to amend the plaint?

i. Records perused. The petitioner filed this petition for amending the property description in the suit schedule stating the description of the suit property was left out due to typographical error. On the other hand, the 1<sup>st</sup> respondent challenged the petition stating that the plaint mentioned ground was entirely false and this petition was filed to delay the suit proceeding.

ii. Both the side did not file any document in this proceeding.

iii. In this regard this court relies upon the judgment of ***our Hon'ble High Court in S.Maria Francis v. Lordhu mary and ors. (CDJ-2019-MHC-3259), as,***

*“12. Whether the agreement is barred by limitation and whether the petitioner is entitled for the relief of mandatory injunction or relief of recovery of possession can be decided only after the completion of the trial. But an opportunity for the petitioner to put forth his case is to be given. Already the prayer for possession of vacant site was stated in the prayer column.*

*13. In the above circumstances, this Court deems it fit to permit the petitioner to make necessary amendment in the amendment petition including the prayer for recovery of possession and the necessary Court fee to be paid for all the specific prayer. The order passed by the trial Court is set aside and the matter is remitted back to the trial Court with liberty for the petitioner to carry out necessary amendments in the amendment petition.”*

Thus, our Hon'ble High Court in the above judgment had decided as, when the nature of amendment was already mentioned in the plaint, the relief shall only be decided on completion of trial alone, hence opportunity must be given to petitioner to contest the case by carrying out the amendment.

iv. Applying the above judgment of our Hon'ble High Court to the case in hand, it was found that in the present petition, the petitioner sought for amendment by contending that the description of the suit property alone to be amended. On perusal of entire records, before this court, in the suit proceeding trial was not yet begun by the petitioner / plaintiff. Further as mentioned in the petition, the amendment needed to be carried was only to include the description of a septic tank in suit schedule. Prayer regarding the above septic tank already exist in the plaint prayer. Hence it is clear that there was no change in the total extent or nature of the property but only description of a septic tank already existing in the property was to be included by way of amendment. Since trial was not at all started, such amendment cannot cause any prejudice to the respondent. Thus, to prevent further

litigation, it is necessary to allow the amendment. The amendment made is subject to the proof let in during trial. Thus, as decided by our Hon'ble High Court in the above mentioned verdict, this court finds that the amendment sought by the petitioner can be allowed. Since the plaint was of the year 2016 and this amendment was filed after much delay, this court is inclined to allow this petition with cost.

5. **In the result**, the petition is allowed, with cost of Rs.1000/- to be paid to 1<sup>st</sup> respondent / 1<sup>st</sup> defendant on or before 20.08.2024 and steps to carry out amendment shall be made without taking any further adjournment on or before 20.08.2024.

Directly dictated to the Stenographer and computerized error checked and pronounced in the open court on **06<sup>th</sup> day of August 2024**.

**Sd/-**  
**M.P. Ramkishore,**  
District Munsif,  
Vadipatti.

**Petitioner side evidence and documents: Nil**

**Respondents side evidence and documents: Nil**

**Sd/-**  
**M.P. Ramkishore,**  
District Munsif,  
Vadipatti.

**TRUE COPY**

*Fair Order / ~~Draft Order~~*

DISTRICT MUNSIF COURT  
Vadipatti  
*Fair Order / ~~Draft Order~~*  
*IA. No.01/2023*  
*In*  
*O.S. No.114/2026*  
**Date : 06.08.2024**