

**In the Court of District Munsif, Mudukulathur**

**Present : Ms.J.C.Aparna, B.A, L.L.B.,**

**District Munsif,**

**Mudukulathur.**

**Thursday the 24<sup>th</sup> day of April 2025**

**I.A.No.2/2024**

**in**

**O.S.No.13/2021**

Muniyasamy

..... Petitioner/Plaintiff

*/VS/*

Mahadevan

..... Respondent/Defendant

This petition came on 02.04.2025 before this court for a final hearing in the presence of Thiru.S.Chandrasekaran, Learned Counsel for the Petitioner/Plaintiff and Thiru.Y.T.Ansari, Learned Counsel for the Respondent/Defendant and upon hearing both sides arguments and upon perusing the material records and having stood over till this day for consideration, this court delivered the following:

**ORDER**

This petition has been filed under Order 6 Rule 17 of Civil Procedure Code to amend the plaint.

**2. The contention of the Petitioner/Plaintiff in brief:-**

The petitioner/plaintiff prays that the extend of the suit properties filed with the plaint differs from the report of the commissioner appointed by the court. The petitioner/plaintiff states that the error is unintentional and due to his illiteracy he was unaware of the extent. The petitioner prays to amend the plaint as per the extend stated in the commissioner report. The petitioner also states

that he would be put to irreparable loss and hardship if the plaint is not amendment. Hence, prays to allow the petition.

### **3. Brief averments of the Respondent/Defendant in brief:**

The respondent vehemently denies the averments in the petition except which are expressly admitted. The respondent further states that the petitioner has filed this petition belatedly to prolong the suit and to harass the defendant. It is also stated that there has been no explanation as to the filing of the petition after delay and also states that the petitioner has no right in the suit property. Hence, prays to dismiss the petition with cost.

### **4. Point for consideration:-**

Whether the petition be allowed and the relief be granted as prayed for?

No documents filed on either side. Heard both sides.

### **5. Answer to the Point:-**

5.1. On hearing both sides and considering the pleas it is seen that on the basis of the commissioner report filed before this court on 30.03.2023 the petitioner prays to amend the extent of the suit property from 660 sq.ft to 740 sq.ft which is marked as ABCD in the commissioner report and plan. The respondent states that the application for amendment was moved after 1 year from the filing of Advocate Commissioner's report. It is settled law that the amendment cannot be denied on the basis that the application has been filed in a belated stage.

5.2. The learned counsel for the petitioner further submitted that at the filing of the suit, the petitioner only knew that the encroachment was to the extend of 660 sq.ft subsequent to the filing of the Advocate Commissioner's

report, the petitioner came to know that the respondent had encroached to the extend of 740 sq.ft. But as per the respondent, it is their property and the question of encroachment does not arise at all. But the respondent has not filed any objection as to the Advocate Commissioner's report. In the present case, the issues have been framed and the matter has been taken up the trial but evidence has not been commenced in order to decide the case on merits. Hence this court thinks it is necessary to allow the amendment that may be necessary for determining the real question in controversy between the parties given the other side will not be prejudiced. In the present case, whether the encroachment is upto 660 sq.ft or 740 sq.ft or if there is any encroachment at all can be decided only on the merits at the time of trial.

5.3. Considering all the facts and circumstances of the present case and the fact that trial has not yet commenced, and there is no objection filed in respect of the commissioner report and to avoid multiplicity of legal proceedings, this court takes a liberal approach in allowing the petition and finds that the structure and nature of the suit will not get altered by the proposed amendment.

In the result, this petition is allowed. No cost.

Dictated by me to the Steno Typist, transcribed by her corrected by me and pronounced in open court 24<sup>th</sup> day of April 2025.

**District Munsif,  
Mudukulathur.**

