

In the Court of District Munsif, Mudukulathur

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

District Munsif,

Mudukulathur.

Wednesday the 23rd day of April 2025

I.A.No.5/2024

in

O.S.No.94/2013

1. Late.Paulsamy
2. Vilankar
3. Vallimayil
4. Indirani
5. Chandran
6. Nagarajan
7. Kalimuthu
8. Selvi
9. Shanthi
10. Kanniga
11. Karungammal
12. Selvam
13. Kala
14. Priya
15. Bharathiraja

P 11 to P15 are Lr's of deceased P2
added as per order in I.A.No.7/2024 dated 10.12.2024
Amended as per order in I.A.No.9/2024 dated 02.01.2025.

..... Petitioners/Plaintiffs

/VS/

1. Late.Lakshmi
2. Murugesan
3. Nirmala Devi
4. Indira
5. Rani

..... Respondents/Defendants

This petition came on 03.04.2025 before this court for final hearing in the presence of Thiru.S.Periyasamy, Learned Counsel for the Petitioners/Plaintiffs, Thiru.K.Alagarsamy, Learned Counsel for the 2nd to 5th Respondents/Defendants and of 1st respondent (died) 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 and 18 of Civil Procedure Code to amend the plaint.

2. Brief averments of the Petitioners/Plaintiffs in brief:-

The petitioner is the 6th plaintiff in the main suit and files this petition for himself and on behalf of the other petitioners/plaintiffs. This petitioner states that the 1st defendant has filed her written statement without proper explanation. It is also stated the plaintiffs in lieu of a petition appointed a commissioner to measure the suit property on the basis of their Sale deed and Revenue documents. Meanwhile the 1st defendant died and 2 to 5 defendants were impleaded as her legal heirs. In spite of granting multiple adjournments the 2 to 5 defendants did not file additional written statement, on 12.04.2024 the 2 to 5 defendants have filed a additional written statement contrary to the written statement on basis of the revenue records and commissioner reports and plan. As per the Sale deed dated 07.05.1910 the entire property including the suit property is identified as EFCD and the suit property within the entire property is identified as ABCD in the commissioner report and plan. Hence the petitioners/plaintiffs state that it is necessary to amend the plaint as per the commissioner report. It is also stated that the proposed amendment will not change the nature of the suit and the defendants have also endorsed as to no objection to the report of the commissioner. Hence prays to allow the petition.

3. Brief averments of the 2nd respondent and adopted by the 3rd to 5th respondents in brief:

The respondents deny in total the contents of the petition. The respondents state that the petitioners claim to amend the plaint in regard to the portion mentioned as ABCD on the basis of the commissioner report. But if the plaint is amended as per the commissioner report, then EFCD will be identified as suit property. It is further stated that as per the plaint documents ABCD markings is identified as the whole property but in the commissioner report ABCD denotes only a portion of the suit property, and states that the usage of same notations creates confusions. The respondents further state that exact extend of which is to be amended is not mentioned. It is also stated that there is no mention as to the inclusion of whether the house of the plaintiffs is situated within the portion to be amended or how much court fee is to be paid. It is also stated that this petition is filed 10 years after the filing of the suit and 3 years from the date of commission report. Since it seems that a new cause of action might arise and might result in prolonging the suit, the respondents prays to dismiss the same.

4. Point for consideration:-

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

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 17.02.2021, the petitioner prays to amend the suit property as mentioned in the commissioner report. While the plaint was instituted, a model diagram showing the entire property ABCD and the suit property EFCD which is a portion of the entire property was filed along. Subsequently a commissioner was appointed and he

filed the report and plan. In the commissioner's report and plan the entire property belonging to the plaintiff is marked as EFCD and the suit property within is marked as ABCD. Now the petitioner prays to amend the plaint as to the markings mentioned in the commissioner report (ABCD) instead of the markings (EFCD) as mentioned in the rough sketch. On perusal of both the plaint (EFCD) and the commissioner plan (ABCD), the measurements of the both match i.e., in the suit schedule the suit property is mentioned as EFCD measuring extent of கிழமேல் 166 ஜாதியடி, தென்வடல் கீழ்புறம் 28 ஜாதியடி, தென்வடல் மேல்புறம் 12 ஜாதியடி. The same extent has been mentioned as ABCD in the commissioner report only the notations used differ.

5.2. Meanwhile the respondents have referred in their counter about the confusions regarding the notations used in the plaint and the commissioner plan. Also it is stated on the side of the respondents that no clarifications regarding the extend, value or court fee. In the proposed amendment the petitioners/plaintiffs have only prayed to amend the suit property as mentioned the commissioner report. But on perusal of the commissioner report and the suit property no changes has been seen regarding the extent of the suit property. Only the notations used has been differed i.e., in the suit schedule the portion allegedly encroached by the defendant is mentioned using the notations as EFCD and in the commissioner report the notations ABCD is used.

5.3. Taking into consideration that since the proposed amendment will not change the nature of the suit and there are no material changes in the commissioner report filed by the commissioner, only the notations used in mentioning suit property differs and trial has not yet started this court thinks it is necessary to amend the plaint and to avoid any confusions regarding the suit property because of the contradicting notations used and allow this petition for the reason stated by the petitioners/plaintiffs.

5.4. In the light of the above mentioned discussions, this petition is allowed with a cost of Rs.300/- taking into account the delay of 3 years caused in filing of the application from the date of the report of the commissioner.

In the result, this petition is allowed. The petitioners/plaintiffs are directed to pay a sum of Rs.300/- to the respondents/defendants on or before 28.04.2025 failing which this petition shall stand dismissed.

Dictated by me to the Steno Typist, transcribed by her corrected by me and pronounced in open court 23rd day of April 2025.

**District Munsif,
Mudukulathur.**

