



**IN THE COURT OF THE SPECIAL SUBORDINATE JUDGE FOR**  
**L.A.O.P. CASES, ARAKKONAM, RANIPET DISTRICT.**

PRESENT : **THIRU. G. YUVARAJ, M.A., M.L.,**  
SPECIAL SUBORDINATE JUDGE,  
SPECIAL SUB COURT FOR L.A.O.P. CASES,  
ARAKKONAM.

Thursday, the 9<sup>th</sup> day of January 2025

**I.A. No. 1 of 2024**

**in**

**O.S. No. 172 of 2019**

**(CNR No. TN-RP-07-000-373-2019)**

**(Arakkonam Sub Court O.S. No. 174/2016)**

**(Sholinghur District Munsif Court O.S. No. 127/2012)**

1. G. Parasuraman
2. G. Devendiran (Died)
3. Chittiammal
4. Vaani
5. Bharathi .. Petitioners / Plaintiffs

Vs.

1. Vasantha
2. Santhi
3. Sumathi
4. Chitra
5. Arumugam
6. Venkatesan .. Respondents / Defendants



This petition came up for final hearing before me on 19.12.2024 in the presence of Thiru. K.N. Arumugam and Thiru. A. Chandrasekaran, Advocates for the Petitioners / Plaintiffs and Thiru. P. Ramamoorthy, Thiru. G. Anandhan and Tmt. R. Arthi, Advocates for the Respondents Defendants and upon hearing arguments on both side, and perusing the material records, this court pass the following:

### **ORDER**

The Petitioners / Plaintiffs have filed this petition u/o. 6, Rule 17 of CPC praying to amend the plaint as described in the petition.

#### **2. Brief averments made in the Petition and 4th Affidavit filed by the 4<sup>th</sup>**

**Petitioner** : The Petitioner / 4<sup>th</sup> Defendant in her affidavit had stated that, the Respondents her husband and the 1<sup>st</sup> Plaintiff have filed the above suit against the Respondents for the relief of declaration of their right and title over the suit 'A' schedule property and for permanent injunction. Pending sui9t, her husband died and she herself and other legal heirs have been impleaded as Plaintiffs and she had been examin ed in chief on 10.01.2017 and the case was pending for some other proceedings and now posted for her cross examination. In these circumstances, when her counsel gave instructions to her, she told him that the Defendants have trespassed over the suit 'A' schedule property for about 2 years ago and she was under impression that the said facts were already told to her counsel, but now only she came to know that, she did not intimate her counsel about the Defendants' trespass over the suit 'A' schedule property and she being a woman folk and her mother-in-law is old lady and her daughter was given marriage, taking advantage of the same, the Defendants have trespassed the suit 'A' schedule property 2 years ago and they are in unlawful possession and bound to deliver vacant possession and hence filed this petition seeking permission to amend the plaint.



3. **Brief averments made in the counter filed by the 6<sup>th</sup> Respondent / 6<sup>th</sup> Defendant and adopted by Respondents 1 to 5 / Defendants 1 to 5**: The petition is not maintainable either in law or on facts. This Respondent denies all the averments made in the affidavit. Originally, the Plaintiffs 1 and 2 have jointly filed the suit as O.S. No. 127 of 2012 for the relief of declaration of title and permanent injunction before the District Munsif Court, Sholinghur and this Respondent has filed his written statement as early as in the year November 2012. The suit 'A' schedule property was absolutely belonged to his father Srinivasalu Naidu, as he had purchased the same out of his own money on 01.09.1987 and he was in possession and enjoyment of the same as absolute owner till his death. After his demise, the Respondents being the legal heirs are in possession to the knowledge of the Petitioners and also obtained Patta No. 644 in their name. Except the Respondents, nobody else has got any manner of right, title or interest over the suit 'A' schedule property. In the written statement filed in the year 2012 itself, it has been stated that, the Defendants are in possession and enjoyment of the suit 'A' schedule property. Hence, it is absolutely false to allege that the Respondents have trespassed the suit 'A' schedule property. The Petitioners / Plaintiffs never been in possession and enjoyment of the suit 'A' schedule property at any point of time. When this respondent's father Srinivasalu Naidu and after his death, the Respondents are in absolute possession and enjoyment of the suit properties, the question of trespass about two years does not arise. The Petitioners have filed this petition with false allegations. Hence, prayed to dismiss the petition.

4. *Now the point for consideration is; whether the petition filed by the Petitioners / Plaintiffs to amend the plaint as described in the petition is to be allowed or not.*

5. No oral and documentary evidence have been adduced on either side.



6. The learned counsel for the Petitioners / Plaintiffs contended by reiterating the averments made in the petition and prayed to allow the petition.

7. Per contra, the learned counsel for the Respondents / Defendants contended by reiterating the averments made in the counter and prayed to dismiss the petition.

8. Both side rival contentions are heard carefully. Perused the records. On perusal of the records, it comes to know that, on 16.08.2012, the Plaintiffs 1 and 2 have filed the above suit before the District Munsif Court, Sholinghur for the relief of declaration of their right and title over the suit 'A' schedule property and for permanent injunctions and the same was taken on file in O.S. No. 127/2012. Thereafter, as per the order passed by the Hon'ble Principal District Judge, Vellore in Tr.O.P. No. 4/2016, on 05.10.2016, the suit had been transferred to this court to try jointly along with O.S. No. 588/2014. Subsequently, on 10.01.2017, the trial was commenced and the 4<sup>th</sup> Plaintiff had been examined in chief as P.W.1. Subsequently, the suit was pending for various reasons and in the meantime, the 2<sup>nd</sup> Plaintiff reported dead and his L.Rs. have been added as Plaintiffs 3 to 5. In respect of the suit 'B' schedule property, the relief has also been amended.

9. Now, when the suit is posted for Cross of P.W.1., the Petitioners have filed this petition praying to amend the plaint by alleging that, two years ago, the Respondents have trespassed the suit 'A' schedule property. Neither in the affidavit, nor in the description of amendments, it has been stated as to, when the Respondents have trespassed the suit 'A' schedule property. But, they have simply stated as that, two years ago trespassed. This fact is the matter for consideration at the end of the trial.



10. Here, it is relevant to refer the Order 6, Rule 17 of CPC, which reads as follows;

**Order 6, Rule 17 : Amendment of pleadings : The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties :**

**Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.**

11. As per Rule 17 of Order 6, though the court may at any stage of the proceedings allow either parties to the suit to amend their pleadings, still there is an embargo under the Proviso to the Rule 17, which states that, the party praying to amend the pleadings should establish valid reasons as to why the amendment was not claimed before commencement of the trial. Here, it is to be noted that, it is the contention of the Petitioners that, the 4<sup>th</sup> Plaintiff had been examined in chief on 10.01.2017 and thereafter, the suit was pending for various reasons and whileso, two years ago, the Respondents have trespassed the suit 'A' schedule property. Therefore, as the alleged trespass was took place after commencement of the trial, the Proviso to Rule 17 is not applicable to this petition.

12. Here, it is relevant to refer the judgment of the Hon'ble Supreme Court, reported in **2022, LiveLaw (SC), P. No. 729 // 2023-1-MWN (Civil), P. No. 87, Life Insurance Corporation of India Versus Sanjeev Builders Private Limited & Anr.** In para No. 70 of the said judgment, the Hon'ble Supreme Court has given



various guidelines under what circumstances, the petition for amendment can be allowed and cannot be allowed. In Para No. 70 (iii) it has been held as follows;

***70. Our final conclusions may be summed up thus:***

***(i) .....***

***(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.***

***(iii) The prayer for amendment is to be allowed***

***(ii) to avoid multiplicity of proceedings, provided***

***(a) the amendment does not result in injustice to the other side,***

***(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and***

***(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).***

13. Applying the above dictum laid down by the Hon’ble Supreme Court, this petitions is definitely comes within the ambit of the circumstances under which this petition can be allowed. If this petition is allowed, certainly, the Respondents / Defendants will be given opportunity to file their additional written statement and they can raise all their additional defences in their additional written statement. Therefore, by allowing this petition, the Respondents will no way be prejudiced.

: 7 :



Hence, this court is inclined to allow this petition, however on cost, as this petition is not filed immediately after the alleged trespass and filed after two years.

14. IN THE RESULT, the petition filed by the Petitioners / Plaintiffs to amend the plaint as described in the petition will be allowed on payment of cost of a sum of Rs.1,500/- to the Respondents / Defendants on or before 21.01.2024, failing which, the petition will be dismissed automatically. Call on 21.01.2024 for payment of costs.

This order is directly typed by me in my official Laptop, corrected and pronounced by me in the open court on this the 9<sup>th</sup> day of January 2025.

**SPECIAL SUBORDINATE JUDGE,  
SPECIAL SUB COURT FOR L.A.O.P. CASES,  
ARAKKONAM.**

**Annexure :**

Nil

**SPECIAL SUBORDINATE JUDGE,  
SPECIAL SUB COURT FOR L.A.O.P. CASES,  
ARAKKONAM.**

S.S.C. (L.A.O.P.), ARAKKONAM,  
DRAFT / FAIR ORDER  
in I.A. No. 1 of 2024 in O.S. No. 172/2019  
Dated : 09.01.2025.