

IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF, ATTUR.

PRESENT : **THIRU. G. YUVARAJ, M.A., M.L.,**
PRINCIPAL DISTRICT MUNSIF, ATTUR.

Monday, 1st day of November 2021.

I.A. No. 848 of 2017 in O.S. No. 259 of 2012
I.A. No. 849 of 2017 in I.A. No. 996/2012 in O.S. No. 259 of 2012
I.A. No. 850 of 2017 in I.A. No. 997/2012 in O.S. No. 259 of 2012
(CNR No. TNSA-130000-89-2012)

Sarasu

.. Petitioner / Plaintiff

Vs.

1. K.R. Palanivel
2. P. Saravanan
3. R. Mani

.. Respondents / Defendants.

This petition came up for final hearing before me on 09.08.2021 in the presence of Thiru. R. Arumugam, Advocate for the Petitioner / Plaintiff and Thiru. R. Ramamurthy, Advocate for the Respondents 1 and 2 / Defendants 1 and 2 and 3rd Respondent / 3rd Defendant being set ex-parte and upon hearing the arguments on either side, and upon perusing the materials records, and having stood over till this day for consideration, this date, this court delivers the following;

COMMON ORDER

The Petitioner / Plaintiff has filed these petitions u/o. 6, Rule 17 and u/s. 151 of CPC praying to amend the plaint and petitions as described in these petitions.

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2. **Brief averments made in the petition and affidavit:** The Petitioner / Plaintiff in her affidavit has stated that, she has filed the suit for the relief of declaration and for mandatory injunction and in the plaint, by oversight, she has not mentioned the extent of properties in Survey No. 42/1B as Acres 3.05 cents, but stated as hectare 1.20.0 and already, she has filed another suit in O.S. No. 483/2004 before this court against other defendants by stating that, in her revenue records, the total extent in Survey No. 42/1B was wrongly mentioned as hectare 1.20.0 instead of Acre 3.05 cents and as per the sale deed stands in favour of her father, she is enjoying an extent of acres 3.05 cents in the eastern side of Survey No. 42/1 and one Varadappa Goundar is enjoying an extent of acre 2.03 cents on the western side in the same survey number. The Petitioner / Plaintiff has also stated in her affidavit that, she has filed this suit, since the Respondents / Defendants have encroached on the souther side and eastern side in the same survey number and at the time of filing the suit, as per the wrong revenue records, total extent of the suit properties was given as hectare 1.20.0 (acre 2.96 cents) and at the time of inspection by the Advocate Commissioner, the same mistake came to be known to her and hence it is just and necessary to mention the correct extent as acres 3.05 cents and in her father's sale deed also, the said extent alone was given, but at the time of sub division of the Survey No. 42/1 as 42/1A and 42/1B, the extent in Survey No. 42/1B was wrongly mentioned as hectare 1.20.0 and similarly, while the said Varadhappa Goundar purchased an extent of acre 2.03 cents, patta in Survey No. 42/1A was wrongly given for an extent of hectare 0.86.0, i.e., acres 2.12 cents and patta in respect of an extent of acre 0.09 cents belongs to her was additionally given to the said Varadhappa Goundar and hence it is just and necessary to amend the plaint and petition as described in the petition.

3. **Brief averments made in the counter filed in I.A. No. 850/2017 by the 2nd Respondent / 2nd Defendant and adopted by the 1st Respondent / 1st Defendants :**

This petition is not maintainable in law and on facts and all the averments made in the affidavit are false. The petitioner is not entitled to get permission to amend the plaint and petitions at this belated stage and those petition are filed only to drag on the proceedings and the proposed amendments will change the entire nature of the case of the Plaintiff and the plaints of the plaintiff and documents and records and deeds already existing and admitted by the Plaintiff and it is wrong to say that the suit and other petitions are pending and it is not correct to say that by mistake the plaintiff has pleaded in this case as hectare 1.20.0 instead of acre 3.05 cents and it is irrelevant and unacceptable to say that this plaintiff has filed the suit in O.S. No. 483/2004 against some other defendants before this court regarding the same Survey No. 42/1B as if the plaintiff is enjoying in 42/1 in the eastern portion acre 3.05 cents and another Varadappa Goundar is enjoying the western portion acre 2.03 cents and it is revealed that the Plaintiff is attempting to collect evidence in this case for supporting the alleged O.S. No. 483/2004 for which she is not entitled and the Respondents 1 and 2 did not encroach any alleged souther nside portion or western side portion in the said survey number and there was no any need for filing these petitions and it was not done by mistake in the said petition as hectare 1.20.0 and there is no any justification or necessity to amend the extent of the property as acre 3.05 cents instead of hectare 1.20.0 and the father of the Plaintiff namely, Muthu Goundar did not enjoy the alleged extent said to have been mentioned in the alleged sale deed dt. 09.05.1967 and the concerned patta was issued under UDR scheme on the basis of the actual possession of the plaintiff in the suit property as due measurement which is still in force and not objected and agitated and it is wrong to say that at the time of effecting sub divisions in S.No. 42/1, reduced an extent of acre 0.09

cents in S.No. 42/1B and increased an extent of acre 0.09 cents in S.No. 42/1A and if the amendments are allowed, the Respondents will be prejudiced and hence prayed to dismiss the petition.

4. The learned counsel for the Respondents 1 and 2 has filed a memo to treat the counter filed in I.A. No. 850/2017 as counter for other two petitions, viz., I.A. No. 848/2017 and 849/2017.

5. ***Now the point for consideration is; whether the petitions filed by the Petitioner / Plaintiff for amendment of the plaint and petitions are to be allowed or not?***

6. No oral and documentary evidence have been adduced by both the sides.

7. On the side of the Respondents 1 and 2, the UDR FMB sketch and Old FMB sketch for Survey No. 42 have been marked as Ex.R1 and Ex.R2 respectively during the enquiry in I.A. No. 997/2012. On perusal of the Ex.R1 UDR FMB sketch, it is seen that, Survey No. 42 was sub divided as 42/1A and 42/1B. Survey No. 42/1A is situated on the western side and 42/1B is situated on the eastern side. In Ex.R1, for Survey No. 42/1B, Eastern side North-South measurement was given as 148.2 meter. During the course of enquiry in these I.As., i.e., I.A. No. 848/2017, 849/2017 and 850/2017, on the side of the learned counsel for the Respondents / Defendants, it was informed to this court that the actual eastern side North-South measurements for Survey No. 42/1B should come to 143.2 meter only, but by oversight, in the UDR FMB, it was stated as 148.2 meter. In order to clarify the same, by invoking Section 165 of the Indian Evidence Act, this court issued summons to the Taluk Deputy Surveyor to appear before this court and to clarify the actual eastern side measurements of Survey No. 42/1B.

8. On receipt of the summons, on 02.03.2021, Tmt. Prabhavathi, Taluk Deputy Surveyor, Pethanayakkanpalayam Taluk has appeared before this court and she was examined as C.W.1. This court has put the following questions to the C.W.1.

- 1) தளவாய்ப்பட்டி கிராம சர்வே எண் 42/1பி-ன் விஸ்தீரணம் என்னவென்றால், **அ பதிவேட்டின் படி ஹெக்டேர் 1.20.0.**
- 2) புல வரைபடத்தின்படி சர்வே எண் 42/1பி-ன் நான்கு பக்க அளவுகள் என்னவென்றால், **மேற்கில் 147.0 மீட்டர், கிழக்கில் 148.2 மீட்டர், வடக்கில் 58.0 மீட்டர், தெற்கில் 110.0 மீட்டர் ஆகும்.**
- 3) புல வரைபடத்தில் சர்வே எண் 42/1பி-ன் தென்புற அளவில் 110.0 என்று உள்ளதற்கு பக்கத்திலேயே அடைப்புக் குறிக்குள் 143.2 என்று உள்ளதற்கு அர்த்தம் என்னவென்றால், **42/1 ஏ-ன் தென்புற அளவான 33.2 மீட்டரை, 42/1பி-ன் தென்புற அளவான 110.0 உடன் கூட்டினால் வரும் அளவு 143.2 மீட்டராகும். அதைதான் அவ்வாறு சொல்லப்பட்டுள்ளது.**

9. On the side of the Respondents 1 and 2 / Defendants 1 and 2, the following questions have been put to the C.W.1.

"..... சர்வே எண் 42/1பி-ன் கிழப்புற அளவு 148.2 மீட்டர் என்று உள்ளது, சரியான அளவாக குறிப்பிடப்பட்டுள்ளதா என்றால், 148.2 என்று உள்ளதற்கு கிழக்கில் உள்ள 74.8 மீட்டர் + 68.4 மீட்டர் என்பதை கூட்டினால் 143.2 மீட்டர் என்று வரவேண்டும். ஆனால் புல வரைபடத்தில் தவறுதலாக 148.2 மீட்டர் என்று சொல்லப்பட்டுள்ளது. 42/1பி நிலத்தின் உண்மையான கிழப்புற அளவு 143.2 மீட்டராகும். UDR காலத்தின் போது தயாரித்த புல வரைபடத்தில் தான் 42/1பி-ன் கிழப்புற அளவு 148.2 மீட்டர் என்று

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தவறாக உள்ளது, ஆனால் தற்போது உள்ள கண்ணி புல வரைபடத்தில் சரியான அளவான 143.2 மீட்டர் என்று உள்ளது. கண்ணி புல வரைபடத்தை தாக்கல் செய்கிறேன். அது நீ.ம.சா.ஆ.1 ஆகும்.

10. Through the C.W.1., new Computer FMB for Survey No. 42 is marked as Ex.C1. In the Ex.C1 Computer FMB, eastern side boundary for Survey No. 42/1B is mentioned as 143.2 meter. The learned counsel for the Petitioner / Plaintiff has not disputed these aspects from the C.W.1. Therefore, from the evidence of the C.W.1., it is clarified that in the Ex.R1 UDR FMB, eastern side measurement for Survey No. 42/1B was wrongly given as 148.2 meter instead of 143.2 meter. This court is of the considered opinion that, the dispute between the parties to the suit should have been arose on the misunderstanding of the said wrong measurements in the UDR FMB.

11. Now coming to the merits of the present amendment petitions are concerned, the trial in the suit is not yet commenced. At this stage, it is relevant to read Order 6, Rule 17 of CPC.

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.

12. As the trial in the suit is not yet commenced, this court need not go to the Proviso to Rule 17. But under Rule 17 itself, power has been conferred on the court to allow the amendments, that may be necessary for the purpose of determining the real questions in controversy between the parties. In this case also, as per the revenue records, the patta for Survey No. 42/1B has been issued for an extent of hectare 1.20.0. Whereas, the Petitioner / Plaintiff claims title to an extent of acre 3.05 cents in Survey No. 42/1 and also pleaded that, during UDR, by mistakenly and wrongly, the properties in Survey No. 42/1 were sub divided 42/1A, extent hectare 0.86.0 and Survey No. 42/1B, extent hectare 1.20.0 and in fact, but he is in actual enjoyment of an extent of acre 3.05 cents in Survey No. 42/1B as per the sale deed dt. 09.05.1967 and therefore, where he wants to elucidate these facts by way of amendments.

13. As stated above, the trial in the suit is not yet commenced. The proposed amendment will no way change the nature and character of the suit and no new cause of action is pleaded. If these petitions are allowed, the Respondents would have an opportunity to file the additional written statement by disputing the plea of the Petitioner / Plaintiff. If these petitions are dismissed, certainly the Petitioner may not have an chance to protect his right. Further, by allowing these petitions, no prejudice would be caused to the Respondents / Defendants. On the other hand, the proposed amendments would be necessary for determination of the real questions in controversy between the parties. Hence, this court is inclined to allow these petitions. Considering the nature of the case, there will be no orders as to the costs.

IN THE RESULT, these petitions filed by the Petitioners / Plaintiffs for amendment of the plaint and the petitions are allowed and liberty is given to the Respondents 1 and 2 / Defendants 1 and 2 to file additional written statement and

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additional counters if any on the basis of the amendments. There shall be no orders as to the costs.

This order is typed by me in my Laptop, corrected and pronounced by me in the open court on this the 1st day of November 2021.

(Sd/- G. Yuvaraj)

Principal District Munsif,

Attur.

Annexure :

Petitioner / Plaintiff side witnesses : Nil

Respondents 1, 2 / Defendants 1, 2 side witnesses : Nil

Petitioner / Plaintiff side exhibits : Nil

Respondents 1, 2 / Defendants 1, 2 side exhibits : Nil

Court witnesses :

C.W.1 Tmt. Prabhavathi, Taluk Deputy Surveyor,
Pethanayakkanpalayam Taluk.

Court exhibits :

Ex. C1 New Computer FMB for Survey No. 42.

(Sd/- G. Yuvaraj)

Principal District Munsif,

Attur.

P.D.M. COURT, ATTUR.

DRAFT / FAIR COMMON ORDER

I.A. No. 848 of 2017 in O.S. No. 259 of 2012

I.A. No. 849 of 2017 in I.A. No. 996/2012 in O.S. No. 259 of 2012

I.A. No. 850 of 2017 in I.A. No. 997/2012 in O.S. No. 259 of 2012

Dated : 01.11.2021.