

IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF, ATTUR

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

Wednesday, 8th day of March 2023

I.A. No. 6 of 2022 in O.S. No. 107 of 2022

and

I.A. No. 7 of 2022 in I.A. No. 2 of 2022

in O.S. No. 107 of 2022

(CNR No. TNSA-1300-0113-2022)

Nallathambi

.. Petitioner / Plaintiff

Vs.

1. K. Periyasamy

2. Kala

.. Respondents / Defendants

These petitions came up for final hearing before me on 28.02.2023 in the presence of Thiru. P. Sivarajan, Advocate for the Petitioner / Plaintiff and Thiru. K. Santhanam, Advocate for the Respondents / Defendants 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

I.A. No. 6 of 2022 in O.S. No. 107 of 2022 : The Petitioner / Plaintiff has filed this petition u/o. 6, Rule 17 of CPC praying to amend the plaint as per the description of amendments given in the petition.

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2. **I.A. No. 7 of 2022 in I.A. No. 02 of 2022 in O.S. No. 107 of 2022 :** The Petitioner / Plaintiff has filed this petition u/o. 6, Rule 17 of CPC praying to amend the description of property as per the description of amendments given in the petition.

3. **Brief averments made in the petition and affidavit in both the petitions :** The Petitioner / Plaintiff in his affidavit has stated that, he has filed the suit for the relief of permanent injunction against the Respondents / Defendants and even though in the body of the plaint it is stated that the cart track is running, in the plaint averments and description of property, S. No. of the cart track is omitted to be mentioned due to inadvertence and therefore, adding S. No. in the body of the plaint and description will not in any way cause prejudice to the Respondents / Defendants, or otherwise, the Petitioner / Plaintiff will be put into great loss and hardship and hence filed these petitions.

4. **Brief averments made in the counter filed by the 1st Respondent / 1st Defendant and adopted by 2nd Respondent / 2nd Defendant in both the petitions :** This petition is not maintainable and the averments stated in the affidavit are false and denied. The averments made in para 3 of the affidavit are not correct and they are denied. No where in the body of the plaint or in the cause of action or in the description of property, the survey number of the cart track has been given and on the other hand, the Plaintiff has conveniently suppressed the fact that it is a public pathway and the road was put up by the Panchayat for the use of villagers and it is not correct to allege that the cart track is leading to the agricultural lands of the Plaintiff and even when the Commissioner visited the suit property, the survey number for the cart track has

not been given and the petitioner has not stated and where how he is entitled to use the cart track as his separate property and no court fees has been paid by him and if the amendments are to be made, it will go to the date of filing of the suit, which will cause very great hardship, since on the date of suit, there was no survey number for the suit cart track and hence prayed to dismiss the petitions.

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

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

7. The learned counsel for the Petitioner / Plaintiff contended by reiterating the averments made in the affidavit and prayed to allow the petitions. Per contra, the learned counsel for the Respondents opposed to allow the petitions, by stating the proposed amendments will cause great prejudice to the Respondents / Defendants.

8. Both side rival contentions are heard carefully. Perused the records. On perusal of the records, it comes to know that, on 28.04.2022, the Petitioner / Plaintiff had filed the above suit against the Respondents / Defendants for the relief of permanent injunction, restraining the Defendants and their persons not to disturb the Plaintiff's peaceful possession and enjoyment of the cart track with iron gate and filed an application in I.A. No. 2/2022 for temporary injunction till the disposal of the suit.

9. On 17.10.2022, the Respondents / Defendants have filed their written statement in the suit and also filed a memo to treat the written statement as counter in I.A. No. 2/2022. When the said I.A. No. 2/2022 was posted for enquiry, the Petitioner / Plaintiff had filed these petition to amend the plaint and

petition. In the suit as well as I.A. No. 2/2022, the Petitioner / Plaintiff claims right over the cart track with iron gate. In the description of property, it was stated as the cart track leading to the agricultural lands in Survey No. 198/7 and the houses situated in Natham Survey No. 920/6 and 913/27. Whereas, the survey number in which the said cart track is situated is not stated in the description of property. Now, by way of amendments in the plaint and I.A. No. 2/2022, the Petitioner / Plaintiff wants to add the words 'சர்வே எண் 920/1-ன் வழியாக'.

10. As the main dispute in the suit is in respect of usage of the cart track by the Petitioner / Plaintiff, without giving its survey number, no valid and effective decree can be passed. As per Order 6, Rule 17 of CPC, at any stage of the proceedings, the court has got power to allow either party to alter or amend their pleadings for the purpose of determining the real questions in controversy between the parties. The Proviso to Rule 17 only bars the court to allow the petition for amendment of pleading after commencement of the trial, unless the court comes to conclusion that inspite of due diligence, the party could not have raised the matter before commencement of the trial. Therefore, the Proviso to Rule 17 is not applicable to these petitions. Whereas, as present amendments being pre-trial in nature, the Respondents / Defendants have got opportunity to file their additional written statement and additional counter in respect of the proposed amendments. Further, the proposed amendments neither alter the nature of the suit nor introduces a new cause of action. Therefore, as the proposed amendments are pre-trial in nature and essential for proper adjudication of the controversy between the parties, and no prejudice would be caused to the Respondents / Defendants in allowing these petitions, this court is inclined to allow these petitions.

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11. IN THE RESULT, the petitions filed by the Petitioner / Plaintiff for amendment of pleadings are allowed. 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 8th day of March 2023.

(Sd/-. G. Yuvaraj)

Principal District Munsif,

Attur.

Annexure :

Petitioner / Plaintiff side witnesses : Nil

Respondents / Defendants side witnesses : Nil

Petitioner / Plaintiff side exhibits : Nil

Respondents / Defendants side exhibits : Nil

(Sd/-. G. Yuvaraj)

Principal District Munsif,

Attur.

P.D.M. Court, Attur.

COMMON DRAFT / FAIR ORDER

in I.A. No. 6/2022 in O.S. No. 107/2022 &

I.A. No. 7/2022 in I.A. No. 2/2022 in

O.S. No. 107/2022

Dated : 08.03.2023.