

IN THE COURT OF DISTRICT MUNSIF, METTUR, SALEM DISTRICT

Present: **Thiru. M.Selvam, B.A., B.L.,**

District Munsif, Mettur

Wednesday, this the 24th day of September 2025

I.A.No. 07 of 2025

in

O.S. No. 173 of 2024

(CNR No. TNSA17-000244-2024)

1. Ramu

2. Alagesan

... Petitioners/Plaintiffs

/versus/

1. Kattiyannan

2. Mayiliammal

3. Kaliappan

4. Palanisamy

... Respondents/Defendants

This petition came up before me for final disposal in the presence of Mr. M.K. Arjunan., B.A., B.L., the learned counsel for the petitioners/plaintiffs and Mr. M.Duraisamy., B.Sc., B.L., the learned counsel for the respondents/defendants. Enquiry heard and having stood over for my consideration till this day, this court passed the following:-

ORDER

Petition filed by the petitioners/plaintiffs under Order 6 Rule 17 of CPC to amend the plaint as set out in the petition.

1. Brief averments in the petition is as follows:

1.1. The petitioners are the plaintiffs in the original suit and the same was filed for the relief of declaration and permanent injunction. The petitioners are using a cart track situates at the Survey no. 383/8A4 to reach their house. After the suit, the respondents had repeatedly tried to destroy the cart track. The petitioners had prevented them. After the suit, the respondent accepted to appoint the court

commissioner and the case was reserved for orders. Subsequently, the respondents had reduced the breadth of the cart track on 12.11.2024 from 6 meters to 6 feet. The petitioners had also lodged a complaint before the Mecheri police station through online. Thereafter, the commissioner was appointed on 20.11.2024 and he visited the suit properties and had filed his report on 29.01.2025 mentioning that the cart track is of length 27 meters. Hence, it is advised to file a petition to seek the relief of mandatory injunction directing the respondents to restore the cart track to the breadth of 6 meters, which was reduced into 6 feet by the respondents on 12.11.2024. Otherwise, the petitioner would be put to irreparable loss. Hence, this petition.

2. Brief averments in the counter filed by the 3rd respondent and adopted by the other respondents is as follows:

2.1. The respondents specifically denied the averments made in the petition. There is no such cart track in Survey no. 383/8A4. Even in the 'A' register of the said property, there is no mentioning of the cart track with 6 meters breadth and 27 meters in length. In the commissioner report, the commissioner had not stated about the breadth of the 'B' schedule cart track. The surveyor had also not mentioned the same in his sketch. The commissioner had specifically stated that there is alternative cart track available for the petitioner to reach their property. The lacuna cannot be filled by the petitioners, subsequently after filing of the suit and especially at this stage. Hence, this petition is liable to be dismissed.

3. No oral and documentary evidence on either side.

4. Points for Consideration:

(i) Whether the amendment sought for in the petition has to be allowed or not?

5. Both side rival submissions heard with regard to their respective pleadings and perused the materials on record. The original suit is filed by the petitioners/plaintiffs as against the respondents/defendants for the relief of declaration, to declare that they are having right over the cart track by way of easement by necessity over the 'B' schedule property and consequential relief of permanent injunction. The 'B' schedule cart track is described in the suit schedule as 27 meters length and 6 meters breadth in Survey no. 383/8A4. On perusal of the case records, it shows that the advocate commissioner had visited the suit property on 28.12.2024 and he had filed his report on 29.01.2025. The report only discloses the length of the 'B' schedule cart track as 27 meters. The commissioner had not at all disclosed about the breadth of the said cart track, however, in the plaint schedule it has been described as 6 meter.

6. It is the contention of the petitioners/plaintiffs that the said cart track is in 27 meters length and 6 meters breadth in Survey no. 383/8A4, but while the suit is pending for orders in the commissioner application, the respondents on 12.11.2024 had reduced the breadth of the cart track from 6 meters to 6 feet and hence, the petitioners had filed this petition to amend the prayer to seek the relief of mandatory injunction directing the respondents to restore the cart track to the breath of 6 meters, which was reduced into 6 feet by the respondents on 12.11.2024. Whether the said cart track is 6 meters in breadth or not and whether the respondents had reduced it's breadth or not are all the questions to be decided in the main suit, after considering the oral and documentary evidence, let in by either side. The said amendment at this juncture would not cause any prejudice to the respondents. At the same time, if this amendment is not allowed, it would cause serious hardship to the petitioners. As per the pleadings of the petitioners, the amendment is also not barred by the law of limitation.

7. Further, in this case, the trial has also not been commenced. The objections raised by the respondents in this petition could only be decided in the original suit proceedings. Further, it is well settled that the court must be extremely liberal in granting the prayer for amendment, if the court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. The said proposition was also observed by **Our Hon'ble Supreme Court** in the case of **Life Insurance Corporation Of India vs Sanjeev Builders Private Limited and another** in **Civil Appeal No. 5909 of 2022**. Therefore, from the overhaul discussion and in the interest of justice and to avoid the multiplicity of proceedings, this court is inclined to allow this petition.

In the result, this petition is allowed, Considering the facts and circumstance of this case, there is no order as to costs.

This order is typed by me in my official laptop, corrected and pronounced by me in the open court on this 24th day of September 2025.

**District Munsif,
Mettur.**

Both side witnesses and exhibits: Nil

**District Munsif,
Mettur.**