

IN THE COURT OF DISTRICT MUNSIF, METTUR, SALEM DISTRICT

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

District Munsif, Mettur

Thursday, this the 06th day of November 2025

I.A.No. 04 of 2025

in

O.S. No. 189 of 2022

(CNR.No.TNSA17-000272-2022

1. Madhu @ Madhammal
2. Rajagopal
3. Seenivasan

Petitioners/Plaintiffs

/Versus/

1. Rangammal
2. Krishnan
3. Perumal
4. Thangavel
5. Selvam

... Respondents/Defendants

This petition came up before me for final disposal in the presence of Mrs. K. Sathiyapriya., B.A., B.L., the learned counsel for the petitioners/plaintiffs and Mr. V. Ranadev., B.A., B.L., the learned counsel for the 1st and 2nd respondents/1st and 2nd defendants. The respondents 3 to 5 were set-exparte on 09.08.2025. 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 suit property

situates at Old Survey no. 12/1, New Survey no. 12/5 to an extent of 0.0105.0 sqmt in Krikapatti village is a natham vacant land and the same belongs to the petitioner vide patta no. 135. In the suit, an advocate commissioner was appointed in I.A.No. 02 of 2022 and he had inspected and measured the suit property and filed his report on 26.03.2023. In his report, the advocate commissioner averred that the 1st respondent had encroached to an extent of 23 x 12 feet measuring 276 sqft on the northern side east-west in the 1st petitioner's land and constructed a house building therein. Then only the petitioners came to know about the alleged encroachment. Hence, the suit has to be amended suitably by adding the prayer of mandatory injunction directing the respondents to remove the encroachment therein and to hand over it's vacant possession. Therefore, this petition is filed by the petitioners.

2. Brief averments in the counter filed by the 2nd respondent and adopted by the 1st respondents is as follows:

2.1. The respondents denied the averments made in the petition. This petition is not at all maintainable. Even before 35 years ago, the house in the front portion of the suit property is allotted to the 2nd petitioner and house in the back side portion of the suit property is allotted to the 2nd respondent by their father orally. Thereafter, they were being in possession of their respective houses and had also obtained separate patta in their names. But the petitioners had filed this petition averring that they now only know about the alleged encroachment.

2.2. In the commissioner report, it was specifically averred that the petitioners had encroached 20 sqft in their front portion. Further, the house of the petitioners is constructed in the year 1989, but the house of the respondents was constructed in the year 1988 itself. Hence, it is not required for the respondents to encroach upon the petitioners property. The commissioner had not averred in his report that any

new constructions was been made by the respondents. Further, the commissioner in his report page 7 had stated that 8 sqft of land shown as Y to A was encroached by the petitioners, which is a government land and also stated that, so only, the patta would be issued including the property of the respondents.

2.3. In certain portion of his report, the commissioner had stated that the respondents had encroached upon the petitioners property and in some portion, it was stated contrarily as the respondents had not encroached upon the petitioners property. There was a compound wall in between the houses of the petitioners and the respondents. If the said compound wall is removed, the respondents could not able to reside in their property. If the respondents house is demolished, they would suffer for their livelihood. Hence, this petition is liable to be dismissed.

3. The respondents 3 to 5 were set-exparte in the original suit proceedings.

4. No oral and documentary evidence on either side.

5. Points for Consideration:

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

6. Both side rival submissions heard with regard to their 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 the suit properties belongs to the 1st petitioner/1st plaintiff and for the relief of consequential permanent injunction.

7. In this instant case, an advocate commissioner was appointed in I.A.No.02 of 2022 and he had inspected and measured the suit properties and filed his report and plan on 14.06.2023. In his report and plan, the advocate commissioner had stated about the encroachment made by the respondents and the extent, which is not in possession of the petitioners. At this juncture, the petitioners/plaintiffs had come forward with this petition to amend the plaint suitably with the relief of mandatory injunction to direct the respondents to remove the encroachments made by them therein and to handover it's vacant possession to the petitioners/plaintiffs.

8. In the commissioner's report and plan, it was also stated by the commissioner that the petitioner/plaintiffs had also encroached upon certain portion more than his property in the front portion of their house. The respondents 1 and 2 filed their counter statement contending the contradictions in the commissioner's report and plan and alleged encroachment made by the petitioners in the Government land. The alleged contradiction in the report could only be decided in the original suit proceedings after considering the evidence, if any in this regard, let in by either side. The same can not be decided in this amendment application. Hence, the contention of the respondents with regard to the alleged contradiction in the report and relief sought for by the petitioners by way amendment and the alleged encroachment made by the petitioners in the Government land are hereby left open to be decided in the original suit.

9. The respondents had also raised a ground with regard to the limitation that they have constructed their house in the year 1988 itself and the same was well known to the petitioner, who had constructed their house in the year 1989 and hence, now they cannot raise the question of encroachment. In the context, with

regard to ground raised by the respondents in respect of the limitation for the prayer sought for in the amendment, this court wants to rely on the observation of **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**, in which their Lordship had observed as follows,

"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. It is also equally well settled that there is no absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed. It is always open to the court to allow an amendment if it is of the view that allowing of an amendment shall really sub-serve the ultimate cause of justice and avoid further litigation"

The relied observation is squarely applicable to the present case on hand. 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 06th day of November 2025.

**Sd/-M.Selvam,
District Munsif,
Mettur.**

Both side witnesses and exhibits : Nil

**Sd/-M.Selvam,
District Munsif,
Mettur.**