

IN THE COURT OF DISTRICT MUNSIF, BODINAYAKANUR.

PRESENT: Thiru.A.Mohamed Hashim, B.A., B.L.,
District Munsif,
Bodinayakanur.

Monday, the 17th day of November 2025

IA.No. 9/2025
in
OS No. 97/2018

Bommaian

... Petitioner / Plaintiff

Vs

1. Visuvashini
2. Selvaraj (Died)
3. Murali
4. The Sub Inspector,
P.C.Patty, Police Station
5. Anuradha

... Respondents / Defendants

IA.No. 10/2025
in
I.A.No: 324/2018
in
OS No. 97/2018

Bommaian

... Petitioner / Plaintiff

Vs

1. Visuvashini
2. Selvaraj (Died)
3. Murali
4. Anuradha

... Respondents / Defendants

This petition came up on 28.10.2025 in the presence of Mr.A.Ganesan, Learned Advocate for the Petitioner and in the presence of Mr.Krishnakumar Learned Advocate for the Respondents 1 & 5. Upon perusing the case records and having stood over for consideration till this day, this court hereby delivered the following...

ORDER

1. The plaintiff in the main suit has filed the present petition under Order VI Rule 17 CPC seeking amendment of the plaint and the application for appointment of an Advocate Commissioner in I.A. No. 324 of 2018.

2. For the sake of convenience, the parties are referred to as per their litigative status in the main suit.

3. The plaintiff has filed the main suit for declaration and for consequential permanent injunction restraining the defendants from interfering with his peaceful possession of the suit property, and for mandatory injunction directing the 1st and 2nd defendants to remove the alleged encroachment made

by them in the suit property. The 1st defendant has filed a counter-claim seeking mandatory injunction directing the plaintiff to remove the encroachment in the nature of a gate put forth in the schedule-mentioned lane, and for consequential injunction restraining the plaintiff from in any manner encroaching upon or preventing the 1st defendant from enjoying the schedule-mentioned property.

4. In the main suit, the plaintiff filed a petition seeking appointment of an Advocate Commissioner to measure and note down the physical features of the suit property. The said petition came to be allowed by this Court on 13.06.2025. The learned Advocate Commissioner filed an interim report before this Court on 15.09.2025 stating that he inspected the suit property on 30.08.2025 along with the VAO and the surveyor. However, the suit property could not be measured since only the old survey number was mentioned in the plaint and in the warrant, whereas the corresponding new survey number is S. No. 522/3.

5. The plaintiff now seeks to amend the plaint to incorporate the new survey number, viz., S. No. 522/3. It is the contention of the plaintiff that his sale deed contains only the old survey number, namely, S. No. 335/11, and therefore the plaint also reflected the old survey number. He submits that the omission is neither wilful nor wanton. Since the Advocate Commissioner has reported that the suit property could not be measured in the absence of the new survey number, the present petition has been filed.

6. The 3rd and 4th defendants have remained ex parte in the suit. Hence notice to them is dispensed with in this petition also, and they are set ex parte herein as well.

7. The 1st and 5th defendants have filed their common counter to these petitions. It is their contention that the plaintiff has been litigating since 2018, and therefore cannot contend that the omission to mention the new survey number is a “clerical error” or a “bona fide mistake.” According to them, the plaintiff has been aware of the new survey number at least from 29.03.2012 but has suppressed the same in the plaint. It is their further contention that the amendment sought goes to the root of the matter and alters the fundamental character of the suit. It is their further contention that allowing the amendment would cause serious prejudice to defendants 1 and 5, as the boundaries would also stand altered. Hence, they pray for dismissal of the petition.

8. The learned counsel for the plaintiff reiterated the averments contained in the affidavit filed in support of the petition and submitted that the proposed amendment does not in any manner alter the nature of the suit. He further contended that since the trial has not yet commenced, no serious prejudice would be caused to defendants 1 and 5.

9. Per contra, the learned counsel for defendants 1 and 5 would submit that the present petition lacks bona fides and that the plaintiff cannot plead

inadvertence at this stage. It is his submission that the proposed alteration of the survey number goes to the root of the matter and would materially alter the nature and character of the suit. Placing reliance on the decision of the **Hon'ble Delhi High Court in *Narendra Pandey v. Jagtar Singh & Others***, he would contend that the power of the Court to permit amendment after commencement of trial is circumscribed and can be exercised only upon satisfaction that despite due diligence, the party could not have raised the plea earlier. According to him, the ratio of the said judgment makes it clear that amendments which fundamentally change the case of a party or introduce a new dimension to the dispute cannot be permitted under the guise of correction.

10. This Court carefully considered the rival submissions and perused the materials available on record. The point for consideration is whether this petitions are liable to be allowed or not?.

11. It is not in dispute that the suit is still at the pre-trial stage and that the issues are yet to be framed. Both the plaint and the counter-claim proceed only on the basis of the old survey number, viz., S. No. 335/11. The learned Advocate Commissioner, in his interim report filed along with the surveyor's report, has categorically stated that the corresponding new survey number of the suit property is S. No. 522/3. The defendants 1 and 5 do not dispute the said survey number. The amendment sought is, therefore, only to incorporate the correct

survey number so as to enable proper identification and measurement of the suit property. The said amendment does not introduce any new cause of action nor does it alter the nature or character of the suit.

12. The judgment relied upon by the learned counsel for defendants 1 and 5 in *Narendra Pandey v. Jagtar Singh & Others* stands on an entirely different footing. The said decision pertains to an amendment sought after commencement of trial, wherein the Hon'ble Delhi High Court was dealing with the rigour of the proviso to Order VI Rule 17 CPC. In the present case, the trial has not commenced and the proviso is not attracted. The settled position of law is that pre-trial amendments are to be considered with a liberal approach, particularly when they do not cause prejudice to the opposite party and are essential for determining the real question in dispute. The amendment sought herein squarely satisfies these parameters and no prejudice, much less any serious prejudice, is demonstrated by defendants 1 and 5.

13. The Hon'ble Supreme Court in *Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd.* [2022 (6) CTC 485] , has reiterated that amendments which assist in determining the real controversy and do not cause prejudice to the opposite party must ordinarily be permitted, especially when sought at the pre-trial stage. The amendment now sought is only to incorporate the correct survey number and does not introduce any new cause of action, alter

the nature of the suit, or withdraw any admission.

14. In the light of the foregoing discussion, this Court finds that the amendment sought is essential for the proper identification of the suit property and for an effective adjudication of the issues involved.

In the result, this petition is allowed. No Costs.

Dictated to the typist, transcribed by her corrected, and pronounced by me in open Court, on the 17th day of November 2025.

District Munsif,
Bodinayakanur.