

IN THE COURT OF THE DISTRICT MUNSIF OF AVINASHI
PRESENT: Selvi.M.AFZAL FATHIMA, B.Com, B.L (Hons),L.L.M
DISTRICT MUNSIF, AVINASHI
WEDNESDAY, THE 18th DAY OF AUGUST 2021

I.A No.1045/2019

IN

O.S. NO. 233/2016

P. Poomani

... Petitioner/Plaintiff

-Vs-

R.Viswanathan

...Respondent/defendant

This petition has been taken on file on 31.10.2019 and it came before me for final hearing on 06.08.2021 in the presence of Thiru.A.Chinnasamy, Advocate for the Petitioner/Plaintiff and Thiru.A. Eswaran, Advocate for the Respondent/Defendant, and this petition having stood over under this Court's consideration and upon perusing the records and after hearing the arguments, and this Court passed the following

ORDER

The petitioner/plaintiff filed a petition Under Order 6 Rule 17 of C.P.C for amending the plaint.

2) The summary of the averments in the affidavit filed by the petitioner :

The petitioner is the plaintiff to this suit. The petitioners having originally filed the suit for the relief of Permanent Injunction have filed this petition in order to amend the prayer, the valuation and also to additionally add few other points to specify the details of the suit property and also to amend the description of the suit property by adding “B” Schedule in addition to the existing “A” Schedule property. The petitioner prays that the proposed amendment will not alter the scope of the suit and does not introduce any new cause of action thereby it is a bonafide one and unless permitted, the petitioner would be put to irreparable loss and hardship.

3) The summary of the averments in the Counter statement filed by the Respondent/ Defendant :

The respondent in his counter, has replied that, this petition is not maintainable. They submit that, they have not involved in any illegal act and all the accusations put forth by the petitioner has to be proved by them. The respondent denies all the allegations and they submit that the proposed amendment alters the cause of action and the alteration cannot be made in the description of the suit property. Thus, the respondent prays that the petition is dismissed with costs.

4) The petitioner and Respondent side, no oral evidence adduced and documentary evidence Nil.

5) Both side arguments heard and records are carefully perused.

6) THE POINT FOR CONSIDERATION IN THIS PETITION IS THAT WHETHER THIS PETITION IS DESERVES TO BE ALLOWED, OR NOT?

7) The petitioner in his petition has stated that the suit property was purchased in 2007 and since then, he has been in peaceful possession and enjoyment of the suit property and had all the revenue records mutated in his name. They add that the respondent, having his house situated in the western side of the suit property illegally made attempts to trespass into the suit property and so he filed the suit for Permanent injunction. As the respondent in the written statement has falsely claimed a portion of the suit property, he has to amend the plaint seeking for the relief of declaration and mandatory Injunction. In the details of the amendment, they have additionally added sentences to Para No.VI and have proposed to add Para No.VI-A where the details of the situation of the property, directing the defendant to close the gate and remove the compound wall illegally constructed by him, the “B” Schedule and the illegal construction of a compound wall in the “B” Schedule have also been added. As the amendment proposes for a change in the prayer, an amendment in the valuation, payment of the Court fee and the addition of “B” Schedule to the suit property is also proposed.

8) In the counter, detailed reply is given by the respondent stating that,

the respondent has not involved in any illegal act of trespass and the compound wall was not constructed to disturb the possession of the plaintiff. The respondent states that, the petitioner cannot falsely allege and thereby seek for declaration and Mandatory Injunction relief and also a direction against the respondent for removal of the compound wall. The details of the amendment introduce a new case and a new cause of action and this proposed amendment has to be denied and thus prays for the dismissal of this petition.

9) On perusal of the petition and the counter, it is very clear that, the petitioner prays for an alteration stating that, as the defendant has falsely claimed title over the suit property, he had to make such amendments. Having discussed the details of the amendments proposed, here the plaint has to completely undergo an alteration as the contents in Para No.VI, the prayer, the valuation and the suit description is also undergoing a change. Addition to the Para No.VI also brings in addition seeking for a direction to remove the wall, the alteration of prayer from Permanent Injunction to Mandatory Injunction and Declaration and also addition of “B” Schedule to the existing “A” Schedule.

10) This amendment changes the actual structure of the plaint and the plaint if amended, will introduce a new cause of action. As the cause of action, the nature of claim and the basic structure of the suit is proposed to be amended, such amendment cannot be permitted to introduce a new case. Thus, as the entirety of the suit will have to undergo a change and as this amendment will

bring in a separate prayer, such amendment is impermissible.

IN THE RESULT, the petition is dismissed. No costs.

Dictated to the Typist directly and typed out by her in Court computer, corrected and pronounced by me in the open Court, this the 18th day of August 2021.

(Sd.) M.Afzal Fathima

**DISTRICT MUNSIF,
AVINASHI.**

LIST OF EXHIBITS MARKED : NIL

LIST OF WITNESS EXAMINED : NIL

(Sd.) M.Afzal Fathima

**DISTRICT MUNSIF,
AVINASHI.**