

**IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.**

**PRESENT: Tmt. V. Vannamalar, M.L., PGDIPR., PGD in CrI. & Fr.Sc.,  
District Munsif, Ponneri.**

Tuesday, the 02<sup>nd</sup> day of April 2024

**I.A.No.1/2020**

in

**O.S.No.96/2018**

Amudha

.....Petitioner/Plaintiff

-Vs -

1. V.Thangavelu

2. T.Sasikumar

..... Respondents/Defendants

This petition came up for hearing on 02.04.2024, in the presence of Mr.D.Duraivelpandian, learned counsel for the petitioner and Mr.P.Ravichandran, learned counsel for the respondents and upon hearing the arguments of the counsels for petitioner and the respondents and on perusal of the material case records and having stood over for consideration before this court till this day, this court delivers the following

**ORDER**

This petition has been filed under Order VI Rule 17 R/W Section 151 of CPC to amend the plaint.

**2. The averments of the affidavit filed by the petitioner are as follows:**

2.1. The petitioner submits that she is the plaintiff in the above suit and has filed the suit for a relief of permanent injunction to restrain the respondents/defendants, their men, agents, servants and others from in any way obstructing the petitioner from using the common pathway and thereby interfering with his peaceful possession and enjoyment of the suit property.

2.2. The petitioner submits that on 31.01.2018 she had purchased the suit property from one P.Nirmala vide a registered sale deed in document No.524/2018 on the file of SRO at Ponneri. From the date of purchase the petitioner is in peaceful possession and enjoyment of the suit property. After the purchase of the said property, the petitioner had constructed shops in the suit property and had also obtained electricity service connection for the same. In the last week of June, 2018, the respondents / defendants obstructed the petitioner from using the common pathway on the northern side of the suit property. When the petitioner questioned the respondents, the respondents along with henchmen threatened the petitioner with dire consequences. The respondents/defendants have no right to obstruct the petitioner from using the common passage to reach her property. At the time of filing of the suit the said common passage was not separately shown in the schedule of property as B schedule of property. Hence now it is just and necessary to amend the plaint schedule to include the said common passage as B schedule property. If this amendment is not permitted, the petitioner would be put to irreparable loss, damage and hardship. Hence, this petition has been filed.

**3. The averments of the counter filed by the 2<sup>nd</sup> respondent and adopted by the 1<sup>st</sup> respondent are as follows:**

3.1. The respondents submit that the suit property along with other properties belong to one Amudhavalli Ammal. The said Amudhavalliammal had three sons namely Dharmalinga Naicker, Venugopal Naicker and V.Duraisamy Naicker. A partition deed was effected between the above sons of Amudhavalli Ammal. In the said Partition, the suit property was allotted to the said Dharmalinga Naicker, who died subsequently. In the said partition it is clear that there is a common family pathway to reach their respective share of properties and no third party has any specific right over the said common family pathway.

3.2. The respondents further submit that another partition deed was executed between the legal heirs of the deceased Dharmalinga Naicker on their own accord.

The 10 feet common passage mentioned in the plaint is not the common passage mentioned in the partition deed executed by the sons of Amudhavalliammal.

3.3. The respondents submit that though the petitioner/plaintiff has purchased the property to an extent of 308 square feet on 31.01.2018 from one P.Nirmala by way of registered document No.524/2018 on the file of SRO, Ponneri, she is not enjoying the property peacefully from the date of purchase.

3.4. The respondent further submits that there is a 40 feet road called Bakthavatchalam street through which the petitioner/plaintiff can approach the suit property purchased by her. In the suit schedule property it is disclosed that the suit property has been bounded on the west by Bakthavatchalam land. But there is only a street situated on the west of the suit property namely Bakthavatchalam Street. Instead of Bakthavatchalam street, it is mentioned as Bakthavatchalam land in the plaint schedule. Without taking necessary steps to amend the same, the petitioner is trying to add another schedule "B" to the suit schedule. Hence this petition is liable to be dismissed with exemplary costs.

4. Neither the petitioner nor the respondents have placed any oral or documentary evidence before this court. Now, it is the paramount duty of the court to decide whether this petition is to be allowed or not.

5. Heard petitioner side arguments. Despite providing with sufficient opportunities, the counsel for the respondents failed to present his arguments before this court. Hence the respondents' side arguments was closed and this court proceeded to pronounce orders based on the records available and on merits of the case. Records Perused.

6. On careful consideration of the material case records, evidences and arguments placed before this court, this court finds that the petitioner is the plaintiff in the suit and the respondents are the defendants in the suit. The suit has been filed by the

petitioner/plaintiff for a relief of permanent injunction to restrain the respondents/defendants, their men, agents, servants and others from in any way obstructing the petitioner from using the common pathway and thereby interfering with his peaceful possession and enjoyment of the suit property.

7. When the suit was pending for trial, this petition has been filed to amend the plaint to include the common pathway under dispute as suit B schedule property. The petitioner contends that he is the owner of the suit property and has been in possession and enjoyment of the same from the date of its purchase. The respondents / defendants obstructed the petitioner from using the common pathway on the northern side of the suit property. At the time of filing of the suit the said common passage was not separately shown in the schedule of property as B schedule of property. Hence now it is just and necessary to amend the plaint schedule to include the said common passage as B schedule property.

8. On the other hand, the respondents submit that the said common pathway is meant only for the family members of deceased Amudavalliammal to reach their respective share of properties and no third party has any specific right over the said common family pathway. The respondents further submit that there is a 40 feet road called Bakthavatchalam street through which the petitioner/plaintiff can approach the suit property purchased by her and instead of showing this street as western boundary to the suit property, the plaintiff has disclosed the western boundary as 'Bakthavatchalam land'. The respondents also state that without taking necessary steps to amend the above western boundary in suit schedule, the petitioner is trying to add another schedule "B" to the suit schedule, which is not maintainable. Though the respondents state that the suit schedule has been wrongly stated in the plaint, the respondents have not established the same by submitting any evidence before this court.

9. Considering that the dispute between the parties to the suit and the relief sought for in the suit is with respect to the usage of common pathway and also considering the the nature of amendment, this court views that that the proposed amendment will not alter the nature of the suit or the cause of action in any manner. Infact, the respondents would be afforded an opportunity to test the veracity of the evidences placed by the petitioner in support of her case, if the amendment is allowed in this case. Considering the nature of the suit, and the facts that are sought to be included in the suit, this court is of the view that the said amendment sought for would only be helpful in proper and effective adjudication of the suit and the said amendment, if allowed, will not cause any prejudice to the respondents. Further the said amendment shall bring clarity and help in the adjudication and also will help in avoiding multiplicity of proceedings.

10. In the circumstances this court is inclined to allow this petition.

11. In the result, this petition is allowed. No costs.

Dictated by me to the steno-typist, who directly typed the same, corrected and pronounced by me in the open court, on this the 02<sup>nd</sup> day of April 2024.

**Sd/-V. VANNAMALAR,  
DISTRICT MUNSIF  
PONNERI**

Both side witnesses and documents:- NIL

**Sd/-V. VANNAMALAR,  
DISTRICT MUNSIF  
PONNERI**

Fair/ Draft Order  
I.A.No.1/2020  
O.S.No.96/2018  
Date: 02.04.2024  
DMC,PNI.