

**IN THE COURT OF THE DISTRICT MUNSIF, TIRUTTANI**

**Present : Tmt. S. KAVIPRIYA, B.A., LLB.,**  
District Munsif, Tiruttani

**Dated this Thursday the 11<sup>th</sup> Day of February 2021**

**IA.No.1 OF 2020**  
**in**  
**OS.No.35 OF 2015**

...

Angaiah

...Petitioner /Plaintiff

/Versus/

Anjeneyan

...Respondent/ Defendant

This petition came up before me for the final hearing on 27.01.2021 in the presence of Mr. V.S.Velayudham, Advocate for petitioner and M/s.V. Kishore reddy, E. Vijayakumar and A. Akila, Advocates for respondent. Upon hearing both sides and having stood over for consideration till this day, this court delivered the following:-

**ORDER**

Petition is filed under order 6 Rule 16 and 17 of CPC to the amend the plaint.

**Petition averments in brief:-**

2. The petitioner has filed this suit against the defendant for declaration and deliver the vacant possession of suit 'B' schedule property and also for mandatory injunction directing the defendant to demolish the cattle shed raised in the suit 'B' schedule mentioned property and for costs. The petitioner is the absolute owner of the suit 'A' schedule property and suit 'B' schedule property is part and parcel of suit 'A' schedule property. The defendant was encroached the suit 'B' schedule mentioned property was mentioned in the plaint 'B' schedule is East to west 20 feet and North to South 3 feet. After filing of this suit the petitioner has filed a petition in IA.No.170/2015 for appointment of Advocate Commissioner along with Taluk Surveyor to measure the property and report also filed before this Hon'ble Court. The

report revealed that the defendant has encroached an extent of 0.7 meter i.e., 2 ¼ feet on North to South 14.4 meter i.e., 48 feet in suit property. The actual measurement of encroachment was come to know the petitioner after commissioner surveyed the suit properties. So, the petitioner has to amend the above said measurements in the plaint 'B' schedule property for proper and complete adjudication. Otherwise the petitioner will be put into much loss and hardship. If the measurement to be amended no subject and nature suit to be changed. The suit nature could not after if the suit 'B' schedule measurement amended. In the interest of justice this petition for amendment is very essential. No prejudice to be caused to the respondents if this amendment petition allowed.

**Counter filed on behalf of the respondent in brief:-**

3. The petition for amendment is not maintainable either in law or on facts. The respondent has encroached the 'B' schedule mentioned property to an extent of 0.7 meter i.e., 2 ¼ feet on North to South 14.4 meter i.e., 48 feet in suit property are all false and denied by this respondent. This petition is not maintainable and this petition is also barred by limitation. The petitioner has filed this to drag on the proceedings. The Advocate Commissioner along with surveyor have inspected the suit property and filed his report and sketch long back, the petitioner has failed to file this petition and now came with this petition. There are no bonafides and no merits in this petition. Hence, the petition has to be dismissed with costs.

**Point for determination:-**

4. Whether the petitioner is entitled to the amend the plaint?

5. The petitioner filed this petition to amend the plaint after the Advocate commission report. In that report the actual encroachment was an extent of 0.7 meter i.e., 2 ¼ feet on North to South 14.4 meter i.e., 48 feet in suit property. The respondent filing his counter and argued to allow the petition on costs. Since, this petition filed after lapse of more than 4 ½ years. The petitioner could have filed this petition immediately after filing this Advocate commission report. But this petition

filed by causing hardship to the respondent. Hence, this petition has to be allowed on costs.

**6. In the result, the petition is allowed on costs of Rs.500/- to the respondent. Costs to be paid on or before 17.02.2021 failing which this petition stands dismissed. Call on 17.02.2021.**

Dictated to Steno - Typist and computerized by her directly, corrected and pronounced by me in open court, this the 11<sup>th</sup> day of December 2020.

Sd/- S. Kavipriya  
District Munsif,  
Tiruttani.

**Both sides Exhibits and witnesses:-**

**NIL**

Sd/- S. Kavipriya  
District Munsif,  
Tiruttani.

