

IN THE COURT OF THE DISTRICT MUNSIF, VANIYAMBADI,

Present: Thiru V.ESHWAR, B.E.,LL.B.,
DISTRICT MUNSIF, VANIYAMBADI

Dated this the 8th day of September, 2025

I.A. No. 7 of 2025
in
O.S. No. 120 of 2018

1. Ambiga (died)
2. Subramani
3. Gopalakrishanan
4. Suresh

Nos.2 to 4 LR's of deceased 1st petitioner added
as per orders passed in I.A.No.4/2022 dated:08.09.2022

... Petitioners/Plaintiffs

Vs.

Prabavathi

... Respondent/Defendant

This petition coming on for final hearing before me on 08.09.2025 upon hearing the arguments of Mr. D.Sampath, learned counsel for the Petitioners, and Mr.K. Umar learned counsel for the Respondent, and upon perusing the petition, the accompanying affidavit, the counter, the documents, and all other material papers on record, this court doth pass the following:

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ORDER

1. This is a petition filed by the petitioners/plaintiffs under Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC"), seeking to amend the plaint in the above suit. The petitioners contend that the proposed amendment is necessary for the proper and effective adjudication of the suit and that it is based on the findings of the Advocate commissioner's report, which was already brought on record in the earlier proceedings of I.A. No. 8 of 2019.

Averments of the Petitioners/Plaintiffs

2. It is the case of the petitioners that they have filed the original suit for the reliefs of declaration and delivery of the encroached portion and for a permanent injunction. During the course of the suit, a Advocate commissioner was appointed by this court in I.A. No. 8 of 2019 to ascertain the extent of the encroachment. Based on the survey plan annexed to the Commissioner's report, the encroachment was found to be to the extent of a breadth of 2.6 metres and a length of 21 metres on the eastern side, and a breadth of 3 metres and a length of 30 metres on the western side, adjoining S. No. 35/2. The petitioners submit that the original plaint, which broadly referred to an encroachment of 7 or 8 cents, requires amendment to incorporate these precise measurements and location details for a just and proper resolution of the dispute. The petitioners

maintain that the proposed amendment does not alter the nature of the suit or the cause of action, nor does it necessitate the payment of additional court fees, and that it will not cause any prejudice to the respondent.

Averments of the Respondent/Defendant

3. The respondent, in her counter, has vehemently opposed the petition, stating that it is not maintainable either in law or on facts. The respondent contends that the petitioners, who initially filed the suit alleging an encroachment of 7 or 8 cents on the **northern side** of the property, are now attempting to "cook up a new case" by claiming encroachment on the **eastern and western sides**. The respondent argues that the cause of action for the newly pleaded encroachment is entirely different from the original one. The respondent further asserts that allowing the amendment would be contrary to the original pleadings and would cause her undue prejudice. On these grounds, the respondent prays for the dismissal of the petition with exemplary costs.

Points for Consideration:

4. The following points arise for consideration in this petition:

- Whether the proposed amendment is necessary for the proper adjudication of the suit?

- Whether the amendment changes the nature of the suit or introduces a new cause of action?
- Whether the amendment, if allowed, would cause any prejudice to the respondent?

Discussion and Findings

5. This court has given its anxious consideration to the arguments advanced by both learned counsels and has carefully perused the pleadings and materials on record. The law governing the amendment of pleadings is well-settled and is primarily governed by the provisions of **Order VI Rule 17 of the CPC**. This rule empowers the court to allow either party to alter or amend their pleadings "at any stage of the proceedings" and on such terms as may be just, "if it is necessary for the purpose of determining the real questions in controversy between the parties." The power of the court to grant leave to amend is wide and should be exercised in the interest of justice. The purpose of this provision is to correct bona fide mistakes and to ensure that the parties are able to present their full case before the court without the necessity of filing a new suit.

6. The Hon'ble Supreme Court, in a plethora of decisions, has reiterated the principles guiding the grant of amendments. A landmark judgment in this regard is **L.J. Leach and Co. Ltd. v. Jardine Skinner and Co.** [1957 AIR 357], wherein it was held that the court's power to grant amendment is wide,

and should be exercised liberally in the interest of justice. More recently, in **Revajeetu Builders & Developers v. Narayanaswamy & Sons** [(2009) 10 SCC 84], the Apex Court laid down the guiding factors for allowing an amendment, which include:

- Whether the amendment is necessary to determine the real controversy.
- Whether the new facts or relief are inconsistent with the original pleadings.
- Whether the amendment would cause prejudice to the other party.
- Whether the amendment is bona fide or made with a malafide intention.

7. Applying these well-established principles to the present case, this court finds that the petitioners' proposed amendment is not only necessary but also crucial for the effective adjudication of the suit. The original plaint, while claiming encroachment, lacked specific details regarding the dimensions and precise location of the encroached portion. The subsequent appointment of an Advocate commissioner and the filing of his report, which is a document prepared under the orders of this court, have provided the exact particulars of the alleged encroachment. The petitioners are now seeking to incorporate these precise details into the plaint. This does not amount to a new cause of action;

rather, it is a clarification and a more specific articulation of the original cause of action, which remains a claim for recovery of the encroached portion.

8. The respondent's contention that the amendment is not permissible as it changes the location of the encroachment from the northern side to the eastern and western sides is without merit. The suit is for the declaration of title and recovery of possession of the encroached portion of the plaintiff's property. The specific dimensions and location as per the surveyor's report are merely particulars of the existing claim. A decree passed on a plaint with vague particulars would be inexecutable. By allowing the amendment, this court will be able to pass a definitive and clear decree which can be easily executed, thereby avoiding a multiplicity of suits, which is a fundamental principle of civil jurisprudence. It is clear that the amendment is based on a report filed with the court and not on an entirely new set of facts.

9. Furthermore, the court finds no prejudice that will be caused to the respondent. The respondent will have every opportunity to file an additional written statement to the amended plaint and contest the new particulars. Therefore, the respondent will not be caught by surprise, and the right to defend the suit is not curtailed in any manner. On the contrary, disallowing the amendment would be a grave injustice to the petitioners and would lead to a multiplicity of litigation, as they would be compelled to file a fresh suit based on the surveyor's findings.

10. In light of the foregoing, this court is of the considered opinion that the proposed amendment is just, necessary, and vital for the determination of the real question in controversy. The application is a bona fide one and is supported by a court-ordered report. Therefore, this court is inclined to allow the petition.

Result

11. In the result, the petition is **ALLOWED**.

12. The petitioners are directed to carry out the necessary amendments to the plaint as prayed for in the petition, and to file the amended plaint, along with a copy of the amended plaint for the respondent, within a period of one week from the date of this order. The respondent is at liberty to file an additional written statement to the amended plaint within two weeks from the date of service of the amended plaint.

13. The cost of this petition shall be borne by the petitioners.

Directly typed by me in my official laptop, corrected by me, and pronounced in open court, this the 8th day of September, 2025.

**DISTRICT MUNSIF,
VANIYAMBADI.**

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ANNEXURE:

Petitioners side Witness: Nil
Petitioners side Documents: Nil

Respondents side evidence: Nil
Respondent side Documents: Nil

**DISTRICT MUNSIF,
VANIYAMBADI.**