

IN THE COURT OF DISTRICT MUNSIF, GUDIYATTAM, VELLORE DISTRICT.

**Present : Thiru.M.N.Rajanandhivarmasiva, B.E., L.L.B.,
District Munsif, Gudiyattam.**

Tuesday, the 29th day of November 2022

IA.1/2022 in IA.521/2018 in OS.82/2012

CNR.No.TNVL10-000006 – 2012

Bhavani.

...Petitioner/Plaintiff.

// Versus //

1. Mohan.

2. Santhosh.

3. Ezhilarasi.

...Respondents/Defendants.

This petition came up on 29.11.2022 before me for final hearing in the presence of **Thiru.K.Rajini., B.A., B.L.,** Advocate for Petitioner/Plaintiff **Thiru. M.V.Jagadeesan., MA., B.L.,** Advocate for the Respondents/Defendants hearing both sides and having stood over for consideration, this court delivered the following

ORDER

Petition filed Under Order 6 Rule 17 of CPC permit to amend the petition in IA.521/2018 as detailed mentioned in the petition and pass such other orders according to the circumstances of the case.

I. Brief Averments of the Petition :-

1.1. Originally petitioner have filed the above said suit for permanent injunction regarding her patta lands against the respondents. The Government promboke property namely road promboke in S.No.4 and promboke in S.No.32 are situated abetting to his patta lands which is the suit schedule mentioned property. The respondents have made an attempt to encroach her patta lands taking advantage of Government promboke property and thereby attempting to upto constructions over the same. Hence, petitioner have filed the above said suit for permanent injunction

against the respondents. Subsequently, during the pendency of the suit the respondents continued their illegal and unlawful acts and thereby put up constructions and petitioner have also made complaint against the respondents and no actions taken against them by the police Officials.

1.2. Subsequently, petitioner have filed an application for appointment of Advocate Commissioner and the learned Advocate Commissioner also filed her report. At the time of inspection and measurement of the property only petitioner came to know the encroachment and constructions put up by the respondents in her patta land in S.No.33/4. The respondents are liable to surrender the encroached portion of her patta land in S.No.33/4 and remove the construction put up by them. Hence, petitioner have already filed an application for amendment in the above said suit vide IA.No.521/2018 and the same is pending for enquiry.

1.3. At the time of enquiry alone petitioner came to know that the present particulars of amendment mentioned in the present petition failed to mention in the earlier amendment petition by mistake and oversight. The present particulars of amendment also are necessary to get proper and complete adjudication in the suit. The proposed amendment will not change the nature of the case and it is also not barred by period of limitation. The present amendment will have to be mentioned in the earlier amendment petition in IA.No.521/2018 and it is necessary for proper and complete adjudication.

1.4. At the time of gone through the case file along with her counsel to prepare the enquiry and came to know that the present proposed amendments not mentioned in the earlier amendment petition due to some inadvertent reasons. The above said

mistake is neither wilful nor wanton. The delay in filing the present application kindly be condoned and it is occurred beyond control. Hence, petitioner filing this application.

II. Brief Averments of the Counter :-

2.1. Actually the respondent are living in the property for more than 30 years and they are enjoying the property as promboke property by paying B-memo to the Government. This respondent has constructed the Cement Sheet House and Thatched House and they obtained electricity service connection 15 years back vide S.No.465-014-338 and this respondent has been in possession and enjoyment of the property for the past 30 years by paying house tax to the Thatimanapalli panchayat. The petitioner should have purchased the property by measuring the property and she has purchased without measurement of the property and now she cannot mention that this respondent encroached the portion of the property. Even presume that this respondent has encroached the portion of the property and same would have been done 30 years back only and there is no reason cause of action after the purchase of the property by the petitioner.

2.2. The petitioner cannot value the plaint for Rs.22,000/- and same is undervalued and it cannot be acceptable and the petitioner failed to mention how she has assessed the value of the property as mentioned in the petition. The prayer of Sec 25(a) TNCF Act will not be attacked at this juncture without any cause of action. The petitioner should have mentioned when the property was encroached and how long it is in the custody of the respondents. So, there is no cause of action. This respondent clearly mentioned in the written statement she has been in possession and enjoyment

of the property for the past 30 years and on seeing the same, the plaintiff should have withdrawn the suit with liberty to file a fresh suit on the same cause of action. So, the plaintiff purchase the property without measurement and filed the suit as if the respondents are attempting to trespass the suit property and same is prevented and there is no mentioning of encroachment. The petitioner should have purchased the property after measurement but he has done so now she has filed a suit with false averment with intention to grab this respondent's enjoyment of the property.

2.3. The amendment cannot be carried out without any cause of action. Without the prayer of declaration the prayer for recovery of possession will not arise and hence this petition is not maintainable. It is false to allege that this defendants encroached the “B” schedule property and value of the property mentioned as Rs.1,560/- is not correct. There is no cause of action for the Amendment sought and the “A” schedule property is not valued and declaration prayer is sought for “A” schedule property. No sketch is filed but in the amendment petition there is mentioning of sketch. Without seeking and payment of Court fee for “A” schedule, the “B” schedule property cannot be added in the plaint. For valuation of the property, the guideline value has to be filed. There is no cause of action for filing the amendment petition and same is belated one and not maintainable. Therefore, the petition is liable to be dismissed.

No oral evidences adduced on either side, and no documents marked on either side.

Heard both sides and records perused

III. Point for Considerations: -

Whether the petition is to be allowed or not?

The petitioner filed the suit for permanent injunction against the respondents, during the pendency of suit, the petitioner filed an application, for Appointment of Advocate Commissioner, the same was allowed and the Advocate Commissioner inspected the property at the time of inspection the petitioner came to know that the respondent is encroached the suit property. Hence, the petitioner filed the amendment petition in IA.No.521/2018 to add the prayer for declaration and prayer for recovery of possession in the amendment petition. The petitioner inadvertently omitted to mention the encroached partition of the suit property and to add the particulars of valuation hence this amendment petition filed to amend the said amendment petition. The Respondent counsel contended that there is no cause of action for filing the amendment petition and same is belated one and not maintainable, considering the both side arguments and on perusal of available material, this Court seen that the petitioner by mistake negligence and inadvertence omitted the particulars in IA.521/2018 amendment petition the Court always gives leave to amend the pleading even if a party is negligent or careless his amendment necessary for the purpose of determining the real question in controversy between the parties has to got to be exercised and to avoid multiplicity of proceeding and pave the way for the final resolution of the dispute in the present suit. Hence, this Court inclined to allow this petition and compensation for the negligent and careless.

In the result this petition is allowed and petitioner shall pay a cost of Rs.2000/- to the respondent.

Directly Dictated to Steno typist, typed by her corrected and pronounced by

me in the open Court on this the 29th day of November 2022.

**District Munsif,
Gudiyattam.**

Petitioner side Witnesses and Exhibits :- Nil

Respondents side Witnesses and Exhibits :- Nil

**District Munsif,
Gudiyattam.**

IN THE COURT OF DISTRICT MUNSIF, GUDIYATTAM, VELLORE DISTRICT.

**Present : Thiru.M.N.Rajanandhivarmasiva, B.E., L.L.B.,
District Munsif, Gudiyattam.**

Tuesday, the 29th day of November 2022
IA.1/2022 in IA.521/2018 in OS.82/2012
CNR.No.TNVL10-000006 – 2012

Bhavani, aged about 57 years, W/o Karunanithi.

Residing at Thattimanapalli Village, Gudiyattam Taluk, Vellore District.

...Petitioner/Plaintiff.

// Versus //

1. Mohan, aged about 32 years S/o Late. Jagannathan.

2. Santhosh, aged about 29 years S/o Late. Jagannathan.

3. Ezhilarasi, aged about 55 years W/o Late. Jagannathan.

All are residing at Thattimanapalli Village, Gudiyattam Taluk,

Vellore District.

...Respondents/Defendants.

**Petition filed Under Order 6 Rule 17 of CPC permit to amend the
petition in IA.521/2018 as detailed mentioned in the petition and pass such
other orders according to the circumstances of the case.**

This petition came up on 29.11.2022 before me for final hearing in the
presence of **Thiru.K.Rajini., B.A., B.L.,** Advocate for Petitioner/Plaintiff

Thiru.M.V.Jagadeesan.,MA., B.L., Advocte for the Respondents/Defendants

hearing both sides and having stood over for consideration, this Court delivered the following

DECRETAL ORDER

- 1. That the petition is be and hereby allowed.**
- 2. That the petitioner do pay a sum of Rs.2000/- to the respondent.**

Given under my hand and the seal of this court on this the 29th day of November 2022.

**District Munsif,
Gudiyattam.**