

**IN THE COURT OF ADDITIONAL DISTRICT MUNSIF COURT,  
POLLACHI.**

**PRESENT: Thiru. M.S.SREENATH, B.A., B.L.,(Hons) L.L.M.,  
Additional District Munsif, Pollachi**

**Wednesday 20<sup>th</sup> day of August 2025**

**IA. No.4/2022**

**in**

**O.S.No.82/2017**

1. M.R.Suresh (Died)
  2. S.Selvi Suresh
  3. R.S.Ansilin
  4. R.S.Ansila
  5. R.Radhamma
- (Amended as per Order in I.A.No.15/24 dated 18.07.2024).... Petitioners/ Plaintiffs

-Vs-

1. A.Moulana Azad
  2. Makkinampatti Panchayat  
Rep. By Block Development Officer,  
Panchayat Union, Pollachi (South)  
or by its President
  3. Block Development Officer,  
Panchayat Union, Pollachi (South)
  4. The Tahsildar, Pollachi
  5. The State rep by its District Collector,  
Coimbatore
- .... Respondents/Defendants

This Petition came up for final hearing before me in the presence of Thiru N.Sundararajan, learned Counsel for the Petitioner and in the presence of Thiru

K.Jambulingam, as learned counsel for 1<sup>st</sup> respondent and 2<sup>nd</sup> to 5<sup>th</sup> respondents remained exparte. Upon hearing the arguments of the both sides and upon perusing the materials on record and having stood over for consideration till this day, this court passes the following:

### **ORDER**

This petition has been filed under Order 6 Rule 17 of the Code of Civil Procedure, 1908, to amend the plaint.

#### **2. GIST OF THE PETITION**

(2.1) The petitioners have filed the above suit for declaration and for other reliefs against the respondents/defendants. The plaint averments may be read as part and parcel of this affidavit. Item-1 of the "A" schedule property is belongs to me and the Item-2 of the "A" schedule property is belongs to the 2nd plaintiff who the 1<sup>st</sup> petitioner's wife. As per the sale deed dated 17.09.1999 I have purchased the Item-1 of the "A" schedule property and the 2nd plaintiff has purchased the Item-2 of the "A" schedule property as per the sale deed dated 13.09.1990. At the time of the purchase in between the Item-1 and Item-2 of the "A" schedule property there is a public road to the width of 30 feet on the North side and South side on the western side 72 feet and Eastern side 70 feet which is described as "B" schedule property in the plaint.

(2.2) The "B" schedule property is a public road and the same has been earmarked as a road which is meant for reach the layout wherein the residence of the Palaniyappa Gounder Colony now called as Thiruvalluvar colony. At the time of purchase itself as per the sale deeds executed infavour of us as well as predeceasors in title they have been given right of access through the suit "B" schedule property.

As such they have enjoyed the "B" schedule property as an access namely public road. Not only we the petitioners but also the entire residence of the layout and as well as the public used the same as an access.

(2.3) As the facts are aforesaid all of a sudden on 10.02.2017 the 1st respondent put up a barbed wire fence around the suit "B" schedule property and put up a flex also stating that the same is belongs to him. Therefore the petitioner immediately enquire the matter and came to know that the 1st respondent has obtained the fraudulent decree before the District Munsif Court in O.S.No. 147/1999 suppressing the real facts without the knowledge of us as well as the public. Therefore the petitioner immediately filed the above suit before this Hon'ble Court for the relief of declaration and for several other relieves against the 1st respondent and others. The plaint averments may be read as part and parcel of this affidavit. The petitioners have also filed a petition for appointment of commissioner in LA.No.291/2017 and commissioner was appointed to note down the physical features of the property and in the presence of the 1st respondent his counsel, the petitioner's counsel and himself the commissioner has visited the property and noted down the physical features of the same and filed the report along with plan before this Hon'ble Court. The commission report along with the plan may be read as part and parcel of this affidavit.

(2.4) At the time of visit by the commissioner there is no construction in the "B" schedule property. It is pertinent to state that the petitioners have also filed a petition under Order 39 Rule 1 & 2 in 1.A.No.289/2017 restraining the 1<sup>st</sup> respondent from anyway constructing the building in the "B" schedule property till the disposal of the case and also for ad interim injunction till the disposal of the application. While the interim application is pending enquiry the 1<sup>st</sup> respondent has made arrangements to construct the building in the "B" schedule property inspite of the case is pending. When the above said facts are represented before this Hon'ble Court, the 1<sup>st</sup>

respondent has given oral undertaking before this Hon'ble Court that the physical features of the suit property will not be altered and the status quo will be maintained till the disposal of the interim application.

(2.5) As the facts are aforesaid while the suit as well as the above L.A.No.289/2017 is pending enquiry, the 1st respondent taking advantage of the summer holidays in the month of may 2018 has put up a building in the suit property illegally inspite of the objection by them. The 1st respondent has completed the construction in the summer holidays in the month of may 2018 giving scant respect to the oral undertaking given by him before this Hon'ble court. Therefore the petitioners have filed another petition in L.A.No.1059/2018 to direct the commissioner to revisit the suit property to note down the physical features of the "B" schedule property and file a report along with plan. The commissioner has also revisited the suit property on 28.01.2019 and files her report before this Hon'ble Court. As per the commission report filed it is very clear that the 1st respondent has constructed the Pucca building in the "B" schedule property ignoring the pendency of the suit as well as the oral undertaking given by him.

(2.6) The petitioners have submitted that even after the 2nd visit of the court commissioner, the 1st respondent has constructed the building on the Southern portion of the "B" schedule property. No vacant space is remaining and now in the entire 'B' schedule property buiding was constructed. Therefore all the constructions put up while the case as well as the enquiry in 1.A.No.289/2017 is pending is to be demolished and removed. The petitioners have stated the measurement and nature of the building constructed by the 1st respondent in the connected petition. Therefore decree for mandatory injunction is to be passed to remove the entire building constructed in the "B" schedule property as detailed in the connected petition as on today as well as the building constructed in the future also. Therefore suitable prayer

for mandatory injunction and amendments is to be carried out in the plaint as detailed in the connected petition for which permission is to be granted to amend the plaint. The petitioners pray that the petition may be allowed.

### **3. GIST OF COUNTER**

(3.1) The Petition is false, frivolous, vexatious and not maintainable either in law or on facts. Except those that are specifically admitted herein, the respondent hereby denied all the averments made in the affidavit, and put the petitioners to the strict proof of the same. The averments made in para two of the affidavit are all false. Since the petitioners do not have any rights to claim the relief of declarations in the above suit, the petition is not maintainable before the eye of law. The averments made in para three of the affidavit are all false. The petitioners have to prove their alleged title over the item I & II of the suit "A" schedule property. The averments that in between the item No.I & Item No. II of the "A" schedule property there is a public road to a width of 30 feet on the north side and the south side and the western side 72 feet and eastern side 70 feet are all false. There will be no public road to a small extent. The alleged suit "B" schedule property is a false one and imaginary thinking of the petitioners.

(3.2) The averments made in para four of the affidavit are all false. The averments that the "B" schedule property is a public road and the same has been earmarked in the layout which was called Palaiyappa gounder colony and now called as Thiruvalluvar colony are all false. It is false to state that petitioners have the right of access through the suit "B" schedule property. The respondent submits that the petitioners never used the alleged the suit "B" schedule property as a public road. The petitioners have suppressed the right of the respondent over his property.

(3.3) The averments made in para five of the affidavit are not fully correct. The respondent submits that as the absolute owner of his property, the respondent has installed barbed wire fence around his property for safety measures. The respondent submits that the petitioners have no rights to question the decree passed in O.S.No.147/99 by this Hon'ble court. The petitioners are well aware of the passing of the decree in the above suit (i.e) O.S.No.147/99 in the year 1999 itself. After perusing of all documentary and oral evidence this Hon'ble court was pleased to grant decree and judgment in O.S.No.147/99. It may be correct to state that commissioner visited the suit properties. The respondent submits that he has filed objection to the commissioner's report. The averments made in para six of the affidavit are all not fully correct. It is false to state that the respondent has given oral undertaking before this Hon'ble court. The respondent submits that when his counsel was engaged in some other court, the petitioners had made false repreciation before this court.

(3.4) The averments made in para seven of the affidavit are all false. It is false to state that the respondent has put the construction illegally. As the absolute owner of the property he has constructed building in it. The petitioners have no rights to question it. The averments made in para eight of the affidavit are all not fully correct. As stated supra, the respondent has constructed the building in his property as per law. It is false to state that respondents has constructed the building against the oral undertaking. The averments made in para nine and ten of the affidavit are all false. The petitioners do not have any rights over the respondent's property and building. So, he has no rights to sought for the amendment made in the petition. There is no merits in the petition. Hence, the petition is liable to dismissed.

#### **4. DISCUSSION**

(4.1) Both sides were heard, records perused, and rival submissions considered. On perusal of the petition and counter, it is clear that the petitioner has sought for amendment to include prayer for mandatory injunction on the ground that illegal constructions was made in the suit B schedule property during the summer vacation holidays of 2018. On reading of the counter of the 1<sup>st</sup> respondent, it is evident that he had objected to this petition solely on the ground that the petitioners have no right in the B schedule property and the 1<sup>st</sup> respondent had made constructions legally. The question whether the petitioners have rights in the suit B schedule property is want to be decided in a full fledged trial and not in this petition. This petition has been filed on 11.02.2021 which is within 3 years from the vacation holidays of 2018 and hence the prayer for mandatory injunction is within limitation. Considering the proposed amendments, this court is of the considered view that allowing the same would avoid multiplicity of proceedings and will not prejudice the otherside or alter the nature of the suit. In cumulative effect of the aforesaid discussion and in the interest of justice and to avoid multiplicity of proceedings, this court is inclined to allow this petition.

IN THE RESULT, this petition is ALLOWED on condition that

1. the petitioner shall pay costs of Rs.500/- to the first respondent on or before 25.08.2025.
2. the petitioner shall also file the amended plaint copy within two weeks from the date of this order.

For compliance of costs call on 25.08.2025

Dictated by me, typed by steno typist on my computer and corrected by me and pronounced by me in open court on this 20<sup>th</sup> day of August, 2025.

Sd/...(M.S.SREENATH)  
ADDITIONAL DISTRICT MUNSIF  
POLLACHI

Petitioner side witnesses and documents - NIL

Respondent side witnesses and documents: – NIL

Sd/...(M.S.SREENATH)  
ADDITIONAL DISTRICT MUNSIF  
POLLACHI

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Fair/Draft Order  
I.A.No.4/2022 in O.S.82/2017  
Date: 20.08.2025  
Additional District Munsif Court, Pollachi

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