

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

Present : **Tmt.N.Renuga.**, B.A., B.L.,

District Munsif, Sulur

Wednesday the 26th day of June 2024

I.A.No.5/2024

in

O.S.No.105/2020

1. Balasubramaniam

2. Sakthivel

... Petitioners/Plaintiffs

/VS/

Devaki

...Respondent/Defendant

This petition is coming on 21.06.2024 for final hearing before me in the presence of Thiru.A.Chinnasamy, Advocate for the Petitioners and Thiru.E.Gopalakrishnan, Advocate for the Respondent and upon perusing the records, and this court made the following:

ORDER

This petition filed by the petitioner under order 6 rule 17 of CPC to amend the plaint.

1. The brief averments of the affidavit filed by the petitioner as follows:

1.1. The petitioner is the deponent herein. The 1st petitioner aware of the facts of the case. He filed this affidavit on his behalf and on behalf of 2nd petitioner also. The petitioners have filed the above suit for permanent injunction from anyway obstructing are enjoyment of the suit cart track.

1.2. Subsequent to filing of the suit the respondent have obstructing the suit cart track by putting mud yeri at the entrance of the suit cart track from the road

where the cart track branches towards north and also put several fallen trees across the north south cart track. Therefore the petitioners have to amend the plaint seeking the relief of mandatory injunction to direct the defendants to remove the obstructions put up by them across the cart track and to restore the cart track to its original position. The trial of the suit has not begin.

1.3. The proposed amendment will not any way alter the scope of the suit or introduce any new cause of action. The respondent are not anyway going to be prejudiced by amending the plaint as detailed in the petition.

2. The brief averments of Counter statement filed by the Respondent as follows:

2.1. The petition is false, frivolous, vexatious and unsustainable in law and facts. The petitioners who were not able to establish the alleged cause of action of the main suit, now has come forward with the present petition to fill up the lacuna in their case. The present petition has emerged only after the inspection and visit made by the advocate commissioner along with the taluk surveyor. The present petition is nothing but a broad daylight attempt to suppress the real facts existed at the time of filing the suit and to misguide this Hon'ble court with a malafide intention to achieve their hidden agenda. The several standing trees on the suit properties very particularly in the area alleged to be a cart tract, and noted down by the advocate commissioner in his report will clearly depict the physical feature of the suit properties.

2.2. The petitioners has filed the above suit against this respondent for the bare relief of permanent injunction and others relief. At the time of filing the suit the petitioner has filed application in IA.No.2/2020 to appoint a advocate commissioner to inspect the suit property to file a report with plan by noting down the physical features. As per order of this Hon'ble court the learned advocate commissioner inspected the suit property after complying the necessary directions in this regard and filed his report very long back on 24.08.2022. The learned advocate commissioner categorically stated that in para 5 of his report that “பிரதிவாதியின் பூமியின் மேல்கோடு அறுதியில் தென்வடலாக நடந்து சென்ற தடமோ, வண்டி

வாகனங்கள் சென்றதற்கான அறிகுறி எதுவும் தென்படவில்லை.”

2.3. Neither in Advocate Commissioner's report, nor photos or Surveyor plan show mark of any cart track to reach petitioner's property, in such circumstance the petitioner filed this application is to amend the plaint is not maintainable. The very amendment will alter the very basic structure of the plaint. It is pertinent to note that the petitioners have not sought for the relief of declaration in the suit.

2.4. The respondent had purchased the entire extend of 2.06 acres from one Mr.Maran for proper and valid sale consideration and from the date of purchase respondent herein as absolute owner cultivating dry agriculture crops like cholam, maize, ground nut, fodder etc and she has been in possession, occupation and enjoyment of her property without any hindrance.

2.5. From 24.08.2022 to 04.03.2024 the petitioner has not taken any valid steps to progress the suit now when the suit was posted for trial in list this petitioner has come up with this vexatious petition to drag on the proceedings endlessly. The petitioner has not got any valid title or possession to remove mud-yeri, trees etc., which are in peaceful possession and enjoyment of the petitioner for several years.

2.6. The petitioner is not entitled to mandatory injunction prayer in the above suit without any valid title is the present petitioner is also not maintainable. The application is liable to be dismissed in limine.

3. Points for Consideration:-

Whether the petition under order 6 rule 17 of CPC to is to be allowed?

4. Points:-

4.1. Heard the counsels for both the parties. The main suit is filed for permanent injunction. Now the petitioners/plaintiffs filed this petition to amend the plaint that the respondent have obstructing the suit cart track by putting mud yeri at the entrance of the suit cart track from the road where the cart track branches towards north and also put several fallen trees across the north south cart track. The main

case is in the stage of trial in list.

4.2. As per Order 6 Rule 17 of CPC, the pre trial amendment to be construed as liberally and the plaint can be allowed to amend. Hence, in the interest of justice this petition is allowed.

In the result, this petition is allowed. No cost.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 26th day of June 2024.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses and documents on petitioners side:-

Nil

List of witnesses and documents on Respondent side:-

Nil

Sd/N.Renuga
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.5/2024 in
O.S.No.105/2020
Dated: 26.06.2024
DMC, Sulur