

IN THE COURT OF THE DISTRICT MUNSIF, SULUR.

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

District Munsif, Sulur

Tuesday, the 21st day of March 2023

I.A.No.8/2023

in

O.S.No.218/2021

1. M.Chinnasamy
2. Vasanthamani
3. Menaha
4. Geethamani
5. Ayyamani

... Petitioners / Plaintiffs

/ Vs /

1. V.A.Sathasivam
2. M.Kavitha
3. K.Muthusamy
4. Sundaramoorthi
5. S.Ravikumar
6. S.Chinnadurai

...Respondents/ Defendants

This petition is coming on 02.03.2023 this day for final hearing before me in the presence of Thiru.M.Ponnusamy, Advocate for the Petitioners/plaintiffs and of Mrs.S.P.Mahalakshmi, Advocate for the 1st and 2nd Respondents/defendants, and the 3rd to 6th respondents/defendants exparte in main suit and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

ORDER

Petition filed under Order 8 Rule 9 and section 151 of CPC to receive the enclosed reply counter statement in IA.No.2/2021 in the above suit.

1. Gist of averment in petition affidavit:-

1.1. The petitioners are the plaintiffs in the main Suit . They filed the suit for declaration and other reliefs regarding the suit cart track by stating that they absolutely enjoying the cart track more than 67 years to reach the land in S.F.No.506 Mopiripalayam village. Except the suit cart track the petitioners have no other access

to reach their property. Even though the North South cart track has not specifically mentioned in settlement deed dated 24.11.1954 their mother Karuppathal and after her demise the petitioners are enjoying 12 feet North South cart track running along the Eastern border of S.F.No.474 of Mopiripalayam village for more than 67 years. The plaintiffs are claiming the cart track right on the plea of easement by prescription. The 1st petitioner purchased the suit item No.1 from respondents 4 to 6 through a registered sale deed dated 02.06.2016. The 1st and 2nd defendants filed written statement with false and incorrect allegations. Hence, it is necessity for the petitioners to give suitable reply by way of reply statement. Hence, this petition filed to receive the reply statement filed along with this application.

2. Gist of averment in counter filed by the 1st and 2nd respondents as follows:-

2.1. The petition is false, frivolous and vexatious. The plaintiffs and her mother never enjoyed the suit cart track for more than 67 years. They have not entitled any right by way of easement by prescription. The other respondents only with permission of these respondents they have used the suit cart track to reach their properties. The defendants 4 to 6 have sold their property in S.F.No.474/3 to Muthusamy they have mentioned only 0.89 acres on 05.09.2007. The 4th to 6th respondents has not retained any property which they got under 24.01.1992 partition deed. The entire property sold to 3rd respondent Muthusamy. Hence, on 02.06.2016 the 4th to 6th respondents have not right execute the sale deed in favour of petitioners. The said sale deed is fabricated one. The 1st petitioner's vendor itself has no right in S.F.No.474/4. Hence, the cart track mentioned in the sale deed also doesn't give any right to the petitioners to use North South cart track running along the properties of 1st and 2nd respondents. Hence, there is no necessity to file reply statement in this case. Petition has to be dismissed.

3. Gist of averment in reply counter statement filed by the 1st petitioner as follows:-

3.1. It is totally false and incorrect to state that the 4th to 6th respondents does

not have any property for sale in S.F.No.474/4 of Mopprimalayam village, on 02.06.2016. The 4th to 6th respondents sold 0.89 acres only out of 0.96 acres in S.F.No.474 of Mopprimalayam village infavour of 3rd respondent under the alleged sale deed dated 05.09.2007 that the 4th to 6th respondents have no share or no right in S.F.No.474 of Mopprimalayam village. Hence, the 4th to 6th respondents have every right to execute the sale deed dated 02.06.2016 in favour of this petitioner.

3.2. The suit cart track is in existence for the past more than 67 years. The sale deed dated 02.06.2016 is true, genuine, perfect, valid under law. The sale deed dated 02.06.2016 is acted upon and will bind upon the 1st and 2nd respondents and others. The sale deed dated 02.06.2016 is in force. The 1st and 2nd respondents have the knowledge of the sale deed dated 02.06.2016 even in the year 2016.

3.3. The petitioners have filed suit against the 1st and 2nd respondents and others in OS.No.1481/2021 pending before the Hon'ble 2nd Additional Subordinate Judge of Coimbatore for the relief of declaration and consequential permanent injunction and other reliefs in respect of total ac.0.51-1/2 of cart track lands in S.F.No.474/6 of Mopprimalayam village, Sulur Taluk. The respondents in Os.No.1481/2021 have an easementary right alone over S.F.No.474/6 to the land in S.F.No.474/6, they have no right to create false documents with intent to create right of way over S.F.No.474/6 to other survey fields.

3.4. The petitioners are entitled to get the reliefs, as prayed for, in the plaint in OS.No.1481/2021, II Additional Subordinate Judge of Coimbatore. The petitioners are cultivation their land in S.F.No.506 by raising Manavarri crops like cholam and etc. The petitioners have constructed residential house and residing there in S.F.No.506. The petitioners are entitled to claim right of way over the suit cart track. It is not correct to state that the Item I of the suit property is not in existence in S.F.No.474/4. The East West cart track mentioned in the partition deed dated 24.01.1992 is not the suit cart track, as alleged.

3.5. The 12 feet wide North South suit cart track is in existence for the past

more than 67 years running along the Eastern border of S.F.No.474 of Mopprivalayam village. The 1st petitioner's mother and after her death, the petitioners are enjoying the suit cart track, as of right, with open knowledge to the respondents and their predecessors in title for the past more than 67 years by taking all kinds of vehicles to reach their land in S.F.No.506. Hence, the petitioners have prescribed the right of way over the suit cart track on plea of easement by prescription. The 1st and 2nd respondents have no locus standi to deny the petitioners' right of way over the suit cart track. Hence, the petitioners are entitled to get the reliefs, as prayed for in the plaint with costs.

4. Point for Consideration:-

Whether the petition under 8 Rule 9 of CPC to receive the enclosed reply counter statement is to be allowed?

5. Points:-

5.1. Heard both side. On perusal of records the main suit is filed for declaration and permanent injunction for the suit cart track. The plaintiffs stand is that they absolutely enjoying the cart track more than 67 years to reach the land in S.F.No.506 Mopiripalayam village by easement by prescription and further except the suit cart track the petitioners have no other access to reach their property. Even though the North South cart track has not specifically mentioned in settlement deed dated 24.11.1954 their mother Karuppathal and after her demise the petitioners are enjoying 12 feet North South cart track running along the Eastern border of S.F.No.474 of Mopiripalayam village for more than 67 years. The plaintiffs are claiming the cart track right on the plea of easement by prescription. The 1st petitioner purchased the suit item No.1 from respondents 4 to 6 through a registered sale deed dated 02.06.2016. But the respondents denied the right of plaintiffs' vendor over the suit cart track and questioned the validity of 02.06.2016 sale deed.

5.2. On perusal of the records all questions regarding the easementary right whether the plaintiffs proved his right over the suit cart track are to be decided only

after examining the oral and documentary evidences. As per as order 8 rule 9 is concern the plea in the plaint and the plea in the reply statement will not be mutually destructive one. Here the plaintiff taken same stands as in plaint, and in the reply statement further it is the version of giving reply to the allegations mentioned in the written statement. It can be allowed without prejudice to the both parties.

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 21st day of March 2023.

District Munsif,
Sulur.

List of witnesses and documents on petitioners side:-

Nil

List of witnesses and documents on Respondents side:-

Nil

District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.8/2023 in
O.S.No.218/2021
Dated : 21.03.2023
DMC, Sulur.