

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.7/2022

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 statement 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 ifor 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. Point for Consideration:-

Whether the petition under 8 Rule 9 of CPC to receive the enclosed reply

statement is to be allowed?

4. Points:-

4.1. 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.

4.2. 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.7/2022 in
O.S.No.218/2021
Dated : 21.03.2023
DMC, Sulur.