

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

Present : **Tmt.N.Renuga.,** B.A., B.L.,
District Munsif, Sulur

Tuesday the 31st day of October 2023

I.A.No.5/2022

in

O.S.No.195/2017

1. S.Vijayalakshmi
2. S.Banumathi

... Petitioners/Plaintiffs

/VS/

1. R.Senthilkumar
2. K.S.Gopalsamy
3. G.Aruna devi
4. G.Dharini
5. Kalaiselvi

...Respondents/defendants

This petition coming on 10.07.2023 for final hearing before me in the presence of Thiru.S.Jagadheesan, Advocate for the Petitioner and Thiru.M.Ganeshkumar, Advocate for the 1st respondent and upon perusing the records, and this court made the following:

ORDER:

This petition filed Under Order 14 rule 1 and section 151 of CPC to amend the issues and frame additional issues.

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

1.1. The 1st petitioner is the 2nd petitioner's sister. The petitioners/plaintiffs filed the main suit for the relief of delivery of possession and permanent injunction. The 1st respondent/defendant in his written statement has denied that they have not encroached the suit property as claimed by the plaintiffs in the B schedule property, and same has to be decided by this Honorable court by framing an additional issues for which the petitioners have filed draft additional issues along with this application. Hence, it is just and necessary to amend the issues by framing an additional issue.

2. The brief averments of Counter filed by the 1st Respondent as follows:

2.1. The petition is false and unsustainable both in law and on the facts of the case. The petition to amend the issues framed by this court in consideration with the

plaint and written statement filed by both the parties. The petitioner cannot dictate terms on this Honourable court with regard to framing of issues.

2.2. The court has ample powers to frame any issue with respect to the above case in the circumstances of the pleadings and evidence that is before this court. The Honourable court has powers to frame issues even at the time of passing the judgment in the above case. A party can file a memo for framing of issues or additional issues and it is for the court to decide on the said aspect. Hence, the petition ought to be dismissed.

3. Point for consideration:-

Whether the petition under Order 14 Rule 1 and section 151 of CPC is to be allowed?

4. Points:-

4.1. Heard both side perused the records. The plaintiffs filed this petition to direct the defendants to begin the trial first. On perusal of records the plaintiffs filed this suit for recovery of possession of S.F.No.423/2 which is mentioned in the B schedule to the suit property from the defendants. Further the defendants also stated that they are also having land in S.F.No.423/2 by way of WILL dated 23.03.1976 from their father Ramasamy. The main suit is for the relief of recovery of possession from the defendant, both parties are having land in S.F.No.423/2 here the matter to be decided is whether the defendants encroached the plaintiffs' property and whether plaintiffs proved the same. Hence, the initial burden on the plaintiffs to prove their case that they having property in S.F.No.423/2 and that has been encroached by the defendants. Hence, the issue regarding whether the plaintiffs proved the encroachment, is necessary to be framed. 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, corrected and pronounced by me in open court this the 31st day of October 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.5/2022 in
O.S.No.195/2017
Dated : 31.10.2023
DMC, Sular