

**IN THE COURT OF THE DISTRICT MUNSIF CUM JUDICIAL
MAGISTRATE, ANNUR.**

PRESENT: Tmt.V.Monika, B.A., B.L., L.L.M.,
District Munsif cum Judicial Magistrate,
Annur.

On this Thursday, the 04th day of July, 2024.

I.A.No.6/2023

in

O.S.No.60/2023

(CNR.No.TNCB21-000603-2023)

Previous case details of this case:-

IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF, COIMBATORE.

I.A.No.4/2023 in O.S.No.1171/2022

(CNR.No.TNCB09-001852-2022)

R.Velusamy

.... Petitioner/3rd Defendant

//Versus//

K.Velusamy

....Respondent/Plaintiff

This petition is coming for final hearing before this court in the presence of Thiru.K.Viswanathan, Counsel for the Petitioner/3rd Defendant and Thiru.R.Rajithkumar, Counsel for the Respondent/Plaintiff Upon perusal of material records and having stood over till this date for consideration, this court delivered the following :

ORDER

This petition has been filed by the petitioner/3rd defendant under Order 7 Rule 11(d) of CPC to reject the plaint in O.S.No.60/2023.

2. Brief averments in the Affidavit:

This petitioner is the 3rd defendant in the main suit for the relief of Permanent Injunction against the defendants 1 to 16 by the Respondent/Plaintiff. The respondent/plaintiff suppressed vital facts, which are the defendants 1 to 14 along with general public were using the Nilaviyal cart track passing through S.F.Nos. 534, 537, 556, 555 and 554 of Kuppepalayam Village, Annur, which is in existence for several decades. General Public are using the pathway to reach their agricultural properties, marked in FMB of S.F.No. 556. The Tamil Nadu State Corporation sanctioned route No. 81/82B and runs a bus through that Nilaviyal cart track, which is also used by private vehicles for travelling of school children. Since, the suit cart track is running near that of respondent/plaintiff's property, he tried to encroach and also encroached a portion of land in S.F.No. 556, which was objected by this petitioner and due to the representation before revenue authorities, the encroachment was confirmed by Revenue Inspector, a notice was issued to 1st respondent to remove encroachment as per Section 7 of Chennai III Act, 1905. After receiving the statutory notice, this suit for bare injunction was filed by the plaintiff but the suit was barred by Sec.14 of the above said Act. Since, this suit was filed against the directions provided in GO. MS. No. 540 dated 04.12.2014, which was issued based on the order of Hon'ble High Court in WP. No. 26722/2013 and MP. No. 1/13 and so the petitioner pleads to reject the plaint on the ground that the suit was barred by law as stated under Order 7 Rule 11 (d) of CPC. Hence, this petition.

3. Brief averments in the Counter statement:

a. The respondent/plaintiff denied the petition as false, frivolous, vexatious and not maintainable both in law and on the facts. The respondent/plaintiff denied the averments of pleadings mentioned in para number 2, 3. The GO cited by the plaintiff is not applicable to this suit as there was no encroachment by this respondent/plaintiff and the erroneous entries in revenue records were rectified in the year 2002 itself. The agricultural lands situated in S.F.No 556/1 and 556/2 are commonly owned and possessed by father of this respondent – Kandasamy Gounder along with 3 co-sharers namely Chinnia Gounder, Karuppasamy Gounder and Arunachala Gounder. Prior to 2002 the village revenue entries in regard with S.F.No. 556/2 of Kuppepalayam Village was erroneously mentioned as if a Nilaviyal pathway was existed in S.F.No. 556/2, the total extent is of 8.58 acres and it was found during partition between this respondent's father along with his brothers and so an application was made to rectify the mistake and based on which the correction were carried out in the 'A' register entries by order dated 01.10.2002, in "TK 8A/48/1412/01/10/2002" and the East West 10 feet cart track in S.F.No. 556/2 used by this respondent's father along with his co-sharers, adjacent property owners for decades were sub divided into S.F.No. 556/2A, which is in existence till now. The S.F.No. 556/2A still stands in the name of the respondent, he never disturb any defendants. Already some portion of respondent's property was given to Kuppepalayam to Karegoundenpalayam connecting road runs South to North and in which the buses, private and public vehicles are travelling is

not the subject matter of this suit. In order to file this false petition, the South to North Village connecting road is mentioned as the Nilaviyal cart track, by the petitioner with illegal intention.

b. The respondents altogether falsely claiming that as if Nilaviyal cart track is existed in S.F.No. 556, by pointing out the erroneous entries. The usage of 10 feet pathway by the defendants in S.F.No. 556/2A was purposefully hidden by the petitioner/plaintiff. Based on the false complaint of the defendant before revenue authorities, Annur Tahsildar with Head Surveyor visited suit property, admitted mistakes in revenue records in S.F.No. 556/2 and all the documents pertaining to the suit property were submitted by the respondent/plaintiff. No title deeds or land records of defendants was mentioned about existence of Nilaviyal cart track through S.F.No. 556/1 and 556/2. In order to grab the suit property from the plaintiff, the defendants 1, 3, 13, 14 colluded together. No Nilaviyal cart track is existed in the suit property as claimed by the defendants and if it is existed, it can be decided only at the end of full fledged trial. This petition is abuse process of law, delaying tactics of the petitioner to prolong the suit, there is no prima facie and no merit in the petition and so it has to be dismissed in limini with costs.

4. Points for Consideration:

Whether this petition u/O.7 Rule 11(d) of CPC is liable to be allowed and the plaint has to be rejected as prayed for?

Discussion

5. Heard the learned counsel for petitioner. Available material records Perused.

6. The petitioner is the 3rd defendant in the above suit for the relief of Permanent Injunction against the defendants 1 to 14, to not to disturb the peaceful possession and enjoyment of suit scheduled properties by the plaintiff/respondent and another relief of permanent injunction is sought for against defendant No.15, 16, to not to alter the entries in 'A' register regarding existence of Nilavial Pathway in the suit property.

7. The respondent/3rd petitioner had filed this petition u/O.7 Rule 11 (d) of CPC, which says that a plaint can be rejected if it is barred by any law. The petitioner stated in their petition that the plaint in this O.S.No. 60/2023 was barred by Sec. 14 of the Tamil Nadu Land Encroachment Act, 1905. For that plea regarding bar of this suit before the Civil Court, the petitioner stated that a statutory notice was issued by the revenue authorities to the respondent/plaintiff in order to remove the encroachment made by him. On perusal of the plaint averments, no where any plea was made by the respondent/plaintiff regarding issuance of any statutory notice to remove encroachment as claimed by the petitioner/3rd defendant. Further, no documents was filed by the respondent/plaintiff in the main suit regarding issuance of any notice as stated by the petitioner/3rd defendant. In such circumstances, when there was no plea

regarding issuance of statutory notice was made by the plaintiff/respondent in the plaint, the bar of suit as stated in the petition as per Sec. 14 of Tamil Nadu Encroachment Act, 1905 would not be applicable to this case on hand.

8. Further, the respondent/plaintiff sought for injunction against the defendants not to interfere with the possession and enjoyment of himself in the lands situated in S.F.Nos. 540/2A, 540/2B, 540/2D, 540/2C, 553/1A, 553/1B, 556/2C, 556/2A, 553/1A. Among these properties of the respondent/plaintiff, the respondent claimed that a Nilaviyal cart track is running through S.F.No. 556. But the respondent/plaintiff claimed in his counter that there is a sub division regarding S.F.No. 556 and a cart track of about 10 feet was sub divided separately into S.F.No. 556/2A and a portion of respondent's property given for the formation of Kuppepalayam to Karegoundenpalayam connection road, in which the Public and private vehicles are passing through, was not included in the suit scheduled properties. When the Petitioner/3rd defendant pleaded that there was a Nilaviyal cart track in S.F.No. 556, but the plaintiff stated that the land in S.F.No. 556 are already sub divided and in the schedule of properties in the plaint, the lands in S.F.No. 556 are mentioned along with its sub division number, the existence of pathway as pleaded by this petitioner/3rd defendant and denied by the respondent/plaintiff has to be decided only after the trial. The Permanent Injunction prayer sought for against the defendant Nos.1 to 14 in the suit is maintainable. Thus, this court is of the opinion that this plaint is not liable to be

rejected as claimed by the petitioner/3rd defendant as per Sec. 14 of Tamil Nadu Encroachment Act, 1905 on the ground of suit barred by law as stated in Order 7 Rule 11(d) of CPC.

9. In the result,

this petition is dismissed. No costs.

Dictated to typist and typed by him in my presence and corrected by me and pronounced by me in the open court on this 04th day of July, 2024.

Sd/- V.Monika,
District Munsif cum Judicial Magistrate,
Annur.

Both side of Exhibits marked: - NIL -

Sd/- V.Monika,
District Munsif cum Judicial Magistrate,
Annur.

Fair Order

I.A.6/2023 in

O.S.60/2023

Dated : 04.07.2024

DM cum JM, Annur

**IN THE COURT OF THE DISTRICT MUNSIF CUM JUDICIAL
MAGISTRATE, ANNUR.**

PRESENT: Tmt.V.Monika, B.A., B.L., L.L.M.,
District Munsif cum Judicial Magistrate,
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On Thursday, this the 04th day of July, 2024.

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I.A.No.4/2023 in O.S.No.1171/2022

(CNR.No.TNCB09-001852-2022)

R.Velusamy S/o.Ramkutti Gounder, Hindu, aged about 34 years, residing at Sengalipalayam, Kuppepalayam Post, S.S.Kulam, Coimbatore – 641 107.

.... Petitioner/3rd Defendant

//Versus//

K.Velusamy S/o.Kandasamy Gounder, Hindu, aged about 50 years, residing at D.No.1/56, Vadakku Thottam, Sengalipalayam, Kuppepalayam Post, S.S.Kulam, Coimbatore – 641108.

....Respondent/Plaintiff

This petition has been filed by the petitioner/3rd defendant under Order 7 Rule 11(d) of CPC to reject the plaint in O.S.No.60/2023.

Date of petition : 10.02.2023.

This petition is coming for final hearing before this court in the presence of Thiru.K.Viswanathan, Counsel for the Petitioners/3rd Defendants and Thiru.R.Rajithkumar, Counsel for the Respondent/Plaintiff and upon perusal of

material records and having stood over till this date for consideration, this court doth order and final order as follows:

(i) that the petition is same is hereby dismissed.

(ii) that there shall be no order as to costs.

Memo of Cost

- Both side cost list not filed -

Schedule of Property

- Nil -

Given under my hand and the seal of this court, this the 04th day of July, 2024.

Sd/- V.Monika,
District Munsif cum Judicial Magistrate,
Annur.

Final Order in :

I.A.6/2023 in

O.S.60/2023

Dated : 04.07.2024

DM Cum JM, Annur.