

**IN THE COURT OF THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
NATHAM**

Present: Tmt. V. Udayasuriya, M.L.,
District Munsif cum Judicial Magistrate,
Natham.

Dated this Thursday, 22nd day of June 2023
I.A. No. 286 of 2022 in Original Suit No. 94 of 2018

K. Pazhaniyammal

... Petitioner/ Plaintiff

..vs..

1. Seeriammal (Died)

2. Kumar

3. Murugan

4. Murthy

...Respondents/Defendants

5. The Thasildar

Natham Scheme, Natham Taluk

6. The District Collector, Dindigul

... Respondents 5 & 6/ Proposed Defendants 5 & 6

This petition is taken on file on 15.09.2022 and coming before me for final disposal on 13.06.2023, in the presence of Thiru. R. Rajkumar, the learned counsel appearing for the Petitioner/Plaintiff, Thiru. S.S. Ramasubramanian, the learned counsel for appearing for the respondents 2 to 4/defendants 2 to 4 and Thiru. Krishnamoorthy, the learned Government Pleader appearing for the Respondents 5 & 6/ Proposed Defendants 5 & 6 and having heard the both sides arguments and upon perusing the documents, this court doth hereby pronounce the following:

ORDER

This petition is filed under Order I Rule 10(2) and section 151 of the Code of the Civil Procedure to implead the Respondents 5 & 6/ Proposed Defendants 5 & 6 as defendants no. 5 and 6 in the main suit.

Brief Averments of the Petition:

1. The petitioner stated that she filed a suit for declaration and for mandatory injunction against the respondents 1 to 4 and the same is pending for trial. She stated that she is the absolute owner of the suit 'A' Schedule property and she is in the possession and enjoyment of the suit 'B' Schedule property to an extent of 200 sq. ft. Which is a Grama Natham Poromboke Land. She used the same as her right to access from 'A' Schedule property to the

public road. Since, the 'B' Schedule property is a Poromboke land, then the Thasildar is the competent person to speak about the same. Therefore, this petitioner was advised to implead the Government as parties to the suit, since they are necessary parties to adjudicate the suit. Hence, this petition was filed and prays to allow the same.

Brief Averments of the Counter Statement Filed By R2 and adopted by R3 and R4:

3. This respondents denied the averments stated in the petition and stated that the petitioners are liable and put to strict proof of the same. The respondent stated that, the suit 'B' Schedule property is a Grama Natham Poromboke land which belongs to the Government. In the said property the respondents 1 to 4 were resided for a long period and the petitioner as well as the revenue authorities were well acquainted with the said fact. By relying the enjoyment of the respondents 1 to 4 in 'B' Schedule property, Family card was issued to them. The respondents 2 to 4 while removing the hut and put up an asbestos roofing, this petitioner approached the respondents 2 to 4 to sell the 'B' Schedule property to her. To that this respondents refused. Hence, the petitioner with an intention to grab the suit 'B' Schedule property filed this suit with false averments. Further, it was stated that, in the written statement itself it was pleaded that the government is the necessary party to the suit and the suit is bad for non joinder of necessary parties. Hence, prays to dismiss the petition.

Brief Averments of the Counter Statement Filed By R5 and R6:

4. The respondents 5 and 6 stated that as per the village revenue records the property in S.F. No. 1161/17 to an extent of 0.00.36 Hectare at Nadumandalam Village was allotted to the Petitioner Pazhaniyammal and DKT Patta issued as per the proceedings in D.K. 8A/337/1426 dated 12.04.2017. In the said property the petitioner constructed a concrete house and enjoyed the same. The another property in S. F. No. 1161/12 to an extent of 0.07.96 Hectare at Nadumandalam Village is a vacant site which was situated in the southern side of the S. F. No. 1161/17. In the said S. F. No. 1161/12, the respondents 2 to 4 put up a temporary shed to a total extent of 165 sq. ft. With 16 1/2 ft. Length in East and West side and 10 ft breadth in Northern and Southern side. The site in which the respondents 2 to 4 presently resided was

situated in S. F. No. 1161/10 to an extent of 0.00.82 Hectare. To the same the patta was issued in the name of one S. Muhammad Yousuf. The respondents 5 and 6 further stated that they are unnecessary parties to the suit and prays to dismiss the petition with cost.

The Point For Determination Is Whether The Petition Is Liable To Be Allowed:

5. Both side heard. Records carefully perused. From the records it is seen that the suit is filed to declare that the plaintiff has acquired the right of easement by prescription over the suit 'B' Schedule property as the frontage of the suit 'A' Schedule property and to grant mandatory injunction and direct the respondents/defendants 2 to 4 to remove the shed put up by them by encroaching over the suit 'B' Schedule property and for consequential injunction.

6. It was admitted by both parties that the suit 'B' Schedule property is a Natham Poromboke land which belongs to the government. The same pleaded in the written statement too. The main contention of the petitioner is that he used the 'B' Schedule property as a way of access to her 'A' Schedule property. In that the respondents 2 to 4 trespassed, encroached and put up a temporary construction with asbestos roofing and it is against her right of easement by prescription.

7. The respondents 5 and 6 also stated that the 'B' Schedule property was belong to government, which was situated in the southern side of the suit 'A' Schedule property in which the respondents 2 to 4 put up a temporary shed but no residence was there. Since, it was admitted by all that the suit 'B' Schedule property is belongs to government and the relief claimed is with respect to the said government property then the respondents 5 and 6 are the proper person to speak about the relief claimed by the petitioner.

8. On the perusal of the entire case records and upon hearing both side arguments and on consider the above facts, this court comes to the conclusion that the respondents 5 and 6/ proposed defendants 5 and 6 are necessary parties to proceed the suit. Therefore, this petition is allowed to implead the Respondents 5 & 6/ Proposed Defendants 5 & 6 as Defendants 5 and 6 in the suit.

In the result, the petition is allowed. Cost not imposed.

This order is typed by me in my laptop and corrected and pronounced by me in the open court this the 22nd day of June 2023.

District Munsif cum Judicial Magistrate,
Natham.

Both side witnesses and documents: NIL

District Munsif cum Judicial Magistrate,
Natham.