

**IN THE COURT OF DISTRICT MUNSIF UTHANGARAI
KRISHNAGIRI DISTRICT**

**Present : Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.
District Munsif, Uthangarai**

On this Thursday, the 26th day of September 2024

I.A.No. 07 of 2024 and I.A.No. 08 of 2024 in O.S.No. 15 of 2020

TNKI13-000016-2020

Jayapal

...Petitioner / Plaintiff

/versus/

1. Loganadhan (Died)
2. Amudha
3. Abimanyu
4. Nagalakshmi
5. Vignesh
6. Alexander
7. Jaganadhan
8. Seetha
9. Vaniyakodi

...Respondents / Defendants

These interlocutory applications came up before this Court on 26.09.2024 for final hearing in the presence of advocate Thiru. K. Murugan, the learned counsel for the petitioner and advocate Thiru. S. Moorthi, the learned counsel for the respondents 2 to 9 and the 1st respondent died and upon hearing both sides and on perusal of records and having stood over for consideration till date, this Court delivers the following:

COMMON ORDER

The application in I.A.No. 07 of 2024 has been filed under section 151 of the Code of Civil Procedure, 1908 seeking to reopen I.A.No. 02 of 2020 which was closed by order dated 18.04.2023.



The application in I.A.No. 08 of 2024 has been filed under Order VII Rule 14(3) of the Code of Civil Procedure, 1908 seeking leave to receive additional documents.

The averments of the petitioner in brief in both applications:

1. The petitioner herein is the plaintiff in the suit instituted for perpetual injunction and avers that the petitioner has filed application seeking temporary injunction in I.A.No. 02 of 2020 which was closed on 18.04.2023 on the grounds that the suit is ripe for trial. The petitioner avers that the respondents evaded to file written statement and let the suit ordered to be heard *ex parte* and subsequently filed application to set aside the same. The petitioner avers that the respondents are taking advantage of the lack of any injunction order in the suit and have been disturbing the petitioner's possession of the suit property continuously despite pending of both civil and criminal cases. Hence, it is necessary to reopen I.A.No. 02 of 2020 which was closed by order dated 18.04.2023. Further, the petitioner avers that the documents such as Patta passbook, adangal, partition deed, encumbrance certificate, FIR are important documents in this suit and it is necessary to mark them in evidence. Hence, the petitioner prays for allowing these applications and grant leave to receive the documents and reopen I.A.No. 02 of 2020 for hearing.

The averments of the respondents in brief in both applications:

2. The respondents deny the averments of the petitioner in toto and aver that the petitioner has filed this application to reopen after one year of the order closing the application to cause hardship and has produced irrelevant documents and the application is liable to be dismissed. The respondents aver that this application has been filed only for the purpose of dragging and prolonging the proceedings and to make the respondents run from pillar to post. Hence, the respondents seek for dismissal of the applications.



Point for consideration:

3. Whether this application is liable to be allowed?

Evidence:

4. Neither of the parties to this application has adduced any oral or documentary evidence.

Discussion:

5. This Court, having considered the arguments advanced on both sides and thoroughly examined the pertinent case records, proceeds to delineate its findings by the following discussion. This suit has been instituted by the petitioner for bare perpetual injunction against the respondents. The application in I.A.No. 07 of 2024 has been filed under section 151 of the Code of Civil Procedure, 1908 seeking to reopen the application in I.A.No. 02 of 2020 filed under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 for temporary injunction. The application in I.A.No. 08 of 2024 has been filed under Order VII Rule 14(3) of the Code of Civil Procedure, 1908 seeking leave to receive additional documents. A perusal of the records of I.A.No. 02 of 2020 would show that it has been *suo motu* closed by order dated 18.04.2023 on the grounds that the suit is ripe for trial with liberty to the petitioner to reopen when and if necessary. The petitioner has averred that the respondents are disturbing the petitioner's possession by taking advantage of no order of injunction passed in the suit and that the respondents are prolonging the proceedings by not filing any written statement and seeking to set aside the *ex parte* order by filing application. A perusal of the case proceedings would show that the respondents have been set *ex parte* on 01.03.2021 for non-filing of written statement and the respondents have moved this Court with application in I.A.No. 03 of 2022 seeking to set aside the *ex parte* order and had succeeded with the same. A further perusal of the



case proceeding would show that issues were framed on 18.04.2023 and thereafter steps were taken due to death of the 1st defendant. Hence, the above observations merit the averments of the petitioner. The petitioner has further contended that the respondents have been interfering with the petitioner's possession and the respondents have made bare denial of the averments. Nevertheless, this Court had granted liberty to the petitioner to reopen I.A.No. 02 of 2020 when necessary. Hence, this Court is of considered view that the objections of the respondents are only perfunctory in nature and this Court is inclined to allow I.A.No. 07 of 2024 to reopen I.A.No. 02 of 2020 for hearing.

6. The petitioner has also sought leave to receive additional documents such as registration copy of the partition deed, adangal, Patta Passbook, encumbrance certificate for the suit property which are *prima facie* relevant documents in support of the averments in the plaint. The respondents have not raised any objection with respect to the admissibility of the documents and it is the settled position of law that mere receiving of documents does not prove any fact and the parties are burdened with the onus of proving the facts with admissible and sufficient evidence. Hence, this Court is of considered view that allowing this application would not prejudice the respondents in any way, rather, it would aid this Court in arriving at a fair and just decision in the suit. Hence, this Court is inclined to allow the application in I.A.No. 08 of 2024 also without any cost in order to avoid delay and multiplicity of proceedings.

Result:

7. As a result, the applications are allowed as follows:

(1) I.A.No. 07 of 2024 is allowed without cost and consequently, I.A.No. 02 of 2020 is reopened for hearing.



(2) I.A.No. 08 of 2024 is allowed without cost and the documents are received.

This order was dictated to the steno-typist and transcribed by her on computer and after rectification of mistakes, pronounced by me in open court on this 26th day of September 2024.

Sd/-

District Munsif
Uthangarai

Annexure

Petitioner side evidence

Petitioner side Witnesses: Nil

Petitioner side Exhibits: Nil

Respondent side evidence

Respondent side Witnesses: Nil

Respondent side Exhibits: Nil

Court Documents: Nil

Sd/-

District Munsif
Uthangarai