

**IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present: Tmt. M.Alima, B.A., L.L.M.,
I Additional District Munsif, Nagercoil.

Tuesday, on the 30th day of January 2024.

I.A. No. 10 of 2022 in O.S. No. 18 of 2019

S.Krishnan

... Petitioner /Plaintiff

- vs. -

S.Nagarajan

... Respondent/Defendant

This petition came before this court on 11.12.2023 for a final hearing in the presence of Mr.M.S.Moorthy, Advocate for the Petitioner/Plaintiff, Mr. Parthasarathy, Advocate for the Respondent/Defendant, and upon hearing both sides, perusing the case records, and having stood over for consideration till this day, this court hereby delivers the following:

ORDER

The petitioner had filed the above petition under Section 151 of the CPC, seeking to re-open the injunction application as I.A.No.2/2019 which was closed on 06.02.2020 and granted a injunction in favour of the petitioner.

1) Gist of the Averments in the Petitioner/Plaintiff's Petition :

The Petitioner stated that he had filed the above suit for declaration, permanent injunction, and other reliefs. He has filed a commission petition and an injunction

petition, and the same was numbered I.A.No.1/2019 and 2/2019. The Court allowed the commission application and appointed one advocate, Deva Prasanna, as an Advocate/Commissioner. The Advocate Commissioner visited the plaint schedule property, and the final report was filed. The injunction application I.A.No.2/2019 was closed on 06.02.2020 and the case was posted for trial. The respondent filed an application to re-visit the plaint schedule property with the commissioner, and the same was numbered as I.A.No.6/2021 in that I.A. he was set exparte and the petitioner filed a set aside petition filed as I.A.No.8/2021, which was posted for orders on 10.06.2022. The respondent and his wife are always disturbing the peaceful possession and enjoyment of the plaint schedule property, and they always quarreled with the plaintiff/petitioner and threatened the plaintiff to remove the septic tank pipe connection and damage the same. So the plaintiff lodged a complaint against the Superintendent of Police, Kanyakumari District, on 03.01.2022 and the said complaint was forwarded to Kottar police station, which inquired about the matter, issued a CSR in favor of the petitioner, and advised the petitioner and respondent to seek a remedy in the civil case. The said petition was closed. The respondent and his wife are always doing illegal activities and have always quarreled with the petitioner, using filthy languages against the petitioner, disturbing the plaintiff's peaceful possession, and threatening to remove the septic tank pipe connection in favour of the petitioner/plaintiff. This court may be pleased to reopen the injunction application as I.A.No.2/2019 which was closed 06.02.2020 and grant an injunction in favour of the petitioner; otherwise, he will be put into irreparable loss and injury that cannot be

compensated in any manner. A separate petition in this regard is filed, and it may be allowed in the interest of justice. Hence, the petitioner has prayed to re-open the injunction application as I.A.No.2/2019 which was closed on 06.02.2020 and granted an injunction in favour of the petitioner.

2) Gist of the Averments in the Respondent/ Defendant's Counter :

The respondent stated that he had filed an objection petition over the commission report. Since the commissioner has failed to note down the essential facts, he has failed to note down the essential point of the septic tank available in the plaint. A schedule property would nullify the plaintiff's prayer in court. The report is not conclusive, which defeats the very purpose of the commissioner's appointment. So an objection was filed by the respondent. The petitioner herein did not file a counter, and he dragged on filing a counter in IA.No.6/2021 so he was ex parte. The petitioner had filed a petition to set aside an ex-parte petition to it, and so it is pending. The allegations meant out in the affidavit are false. The I.A.No.2/2019 was closed on 06.02.2020 and since then, two years have passed, and the respondent has legally approached the Court to set aside the report and properly note down the necessary materials that would serve the proper adjudication of the suit. It is denied that he or his family abused the petitioner or acted in prejudice to the adjudication of the suit. The allegation averred in the affidavit is false, and it is a deliberate attempt on the part of the petitioner to drag on the proceedings to make the issue never-ending. The petition I.A.No.2/2019 is already closed, and the petitioner should have filed only a fresh application with a new cause of action if the allegation is true, so

the petition for reopening I.A.No.2/2019 is not sustainable in the eyes of law. The petitioner has filed a false case against the respondent, and since the allegation has no bona fide basis, the police have not registered any FIR. The allegations are vexatious and frivolous in nature. The respondent denies that he and his family threatened to remove the septic tank, and the allegations are unfounded. The petition to reopen the interim application, I.A.No.6/2019 has no fresh cause of action, and the petition is intended to drag on the proceedings, which is abuse of process of Court. The allegation is without merit. The petitioner has no prima facie case in it, and this is a gambling petition in litigation intended to harass the respondent. The petition for the reopening of I.A.No.2/2019 is not maintainable in law and on facts. Hence, the petition is to be dismissed.

3) The point for consideration is whether the above petition has to be allowed or not?

4) *Point:*

It is an admitted fact that the petitioner has filed a suit for declaration, permanent injunction, and other relief. He has filed a commission petition and an injunction petition, and the same was numbered I.A. No. 1/2019 and 2/2019. The Court allowed the commission application and appointed one advocate, Deva Prasanna, as an advocate/Commissioner. The Advocate Commissioner visited the plaint schedule property, and the final report was filed. The injunction application I.A.No.2/2019 was closed on 06.02.2020 and the case was posted for trial.

5) The learned counsel for the petitioner submits that the respondent and his wife are always disturbing the peaceful possession and enjoyment of the plaintiff's property, and they always quarreled with the plaintiff/petitioner and threatened the plaintiff to remove the septic tank pipe connection and damage the same. So the plaintiff lodged a complaint against the Superintendent of Police, Kanyakumari District, on 03.01.2022 and the said complaint was forwarded to Kottar police station, which inquired about the matter, issued a CSR in favor of the petitioner, and advised the petitioner and respondent to seek a remedy in the civil case. The petition was closed. The respondent and his wife are always doing illegal activities and have always quarreled with the petitioner, using filthy languages against the petitioner, disturbing the plaintiff's peaceful possession, and threatening to remove the septic tank pipe connection in favour of the petitioner/plaintiff. This court may be pleased to reopen the injunction application as I.A.No.2/2019 which was closed 06.02.2020 and grant an injunction in favour of the petitioner; otherwise, he will be put into irreparable loss and injury that cannot be compensated in any manner.

6) The learned counsel for the respondent submits that the allegation averred in the affidavit is false, and it is a deliberate attempt on the part of the petitioner to drag on the proceedings to make the issue never-ending. The petition I.A.No.2/2019 is already closed, and the petitioner should have filed only a fresh application with a new cause of action if the allegation is true, so the petition for reopening I.A.No.2/2019 is not sustainable in the eyes of law. The petitioner has filed a false case against the respondent, and since the allegation has no bona fide basis, the police

have not registered any FIR. The allegations are vexatious and frivolous in nature. The respondent denies that he and his family threatened to remove the septic tank, and the allegations are unfounded. The petition to reopen the interim application, I.A.No.6/2019 has no fresh cause of action, and the petition is intended to drag on the proceedings, which is abuse of process of Court.

7) From the perusal of the I.A.No.2/2019, this court finds that the petition was closed on 06.02.2020. The petitioner has stated that the respondent is obstructing the petitioner's possession; a copy of the police complaint is also enclosed. In these circumstances, it is necessary to reopen the I.A.No.2/2019.

8) If the injunction application I.A.No.2/2019 is not reopened, it will cause irreparable loss to the petitioner. If the petition is allowed, no prejudice would be caused to the respondent. In the interest of justice, the petition was allowed only with regard to the prayer to reopen the I.A.No.2/2019.

9) The petitioner seeks a permanent injunction, but the decision on this remedy is only available in I.A.No.2/2019. As a result, this Court denies the petition for permanent injunction relief.

10) As a result,

This petition was partially allowed without cost, and it was determined that,

- (i) The petitioner is entitled to a reopening of I.A.No.2/2019.
- (ii) The petitioner is not entitled to injunction relief in this petition.

Dictated to the Typist, and typed by her, corrected and pronounced by me, in open court this, the 30th day of January, 2024.

I Additional District Munsif,
Nagercoil.

Petitioner side witnesses and documents : Nil.

Respondent side witnesses and documents : Nil.

I Additional District Munsif,
Nagercoil.

Draft/Fair Order
I.A.No. 10/2022 in
O.S.No.18/2019
Date: 30.01.2024.
I ADM, Nagercoil.