

**IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF,
NAGERCOIL.**

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

Saturday, on the 16th day of November, 2024.

I.A. No. 1 of 2024 in O.S. No. 37 of 2024

G. Sukumaran ... Petitioner / Plaintiff

-vs-

Muruganantham ... Respondent / Defendant

This petition came before this court on 23.10.2024 for a final hearing in the presence of Mr. M. Parameswaran and J. Bergin Jebakumar, learned counsel for the Petitioner/Plaintiff and Mr. K. Sahayadhas 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 under Order I Rule 8 and Section 151 of Code of Civil Procedure, seeking an order permitting the petitioner/plaintiff to file the suit in a representative capacity under Order 1 Rule 8 of CPC to protect the interests of beneficiaries in the Murungavilai Locality and thus render justice.

2. Gist of Averments in the Petitioner Petition :

The Petitioner is the Plaintiff in the suit and had filed this suit for declaration, mandatory injunction, permanent injunction and other reliefs. The petitioner crave leave of this Court to read the averments contained in the body of plaint as part and parcel of this affidavit. That there are numerous persons are having similar rights and interest over the 'C' schedule pathway in the locality area, to avoid the activational disturbance, nuisance and other reliefs. As such there are numerous persons who have similar interest to urge before this Court for the adjudication of this suit. For protecting the interests of such persons, the suit has to be tried under Order I, Rule 8 CPC. in a representative capacity, otherwise, the plaintiff will be put to irreparable loss and injury. Hence, it is humbly prayed that this Court to pass an order permitting the petitioner/plaintiff to file the suit in a representative capacity under Order 1 Rule 8 of CPC to protect the interests of beneficiaries in the Murungavilai Locality and thus render justice. Hence, the petition is to be allowed.

3. Gist of Averments in the Respondent/Defendant's Counter:

The Respondent had filed a counter stating that the petition is not maintainable either in law or on facts. The petition is devoid of merits and liable to be dismissed inlimine. The averments contained in paras 1 to 3 of the affidavit are not disputed, hence require no specific comments. The averments contained in para 4 of the affidavit are denied as false. There is no 'C' schedule

pathway available in usage in the ground as per lie, and on records as alleged by the petitioner. The alleged plaint 'C' schedule area is a part and parcel of the plaint 'B' scheduled property, which is the private patta land of this respondent. The respondent alone is in possession and enjoyment of the 'C' schedule area, which lies within his 'B' schedule property as an absolute owner by paying the tax to the state. The petitioner or the people of Murungavilai locality never used the alleged 'C' schedule area, which exclusively belongs to this respondent at any point of time as alleged by the petitioner. Hence, the averment that numerous persons are having similar rights and interest over the alleged 'C' scheduled pathway is false and the same is untenable under law as well as on facts. Since the people of Murungavilai locality have no interest or right over the private patta land of this respondent, the petitioner has no locus standi to try the suit under representative capacity as sought for in the petition. Hence the question of protecting the interests of persons in the Murungavilai locality by the petitioner will not arise. The averments contained in paras 5 and 6 of the affidavit are wrong and misleading. As stated supra, the part of the alleged 'C' scheduled property is the private patta land of this respondent. Neither the petitioner nor the people of Marungavilai locality has used the respondent's property as pathway at any point of time. On that sole ground itself, the present petition cannot be entertained by this court and as such the suit deserves for dismissal at the threshold. Further, no prejudice will be caused to the petitioner, if this petition is not allowed. In any view of the matter, the

petition cannot be entertained by this court. Hence the petitioner is not entitled for any order or relief from this court as prayed for in the present petition. The petitioner has not approached this court with clean hands and has filed the most frivolous and vexatious petition with false averments, with an evil motive to get an illegal gain over this respondent's property. Hence, the respondent pray that to accept this counter and dismiss the petition with costs.

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

5) Point:

Heard both sides. Records perused. Originally the suit has been filed for a declaration that the plaint 'C' schedule property is the public common pathway and a decree for a mandatory injunction to direct the defendant to remove the Hollow bricks new constructions and the two gates on the 'C' schedule pathway 'IJKL' area, and if failure on the part of the defendant, the plaintiff may be directed to remove the alleged construction and recover the expenses from the defendant and a decree for a permanent prohibitory injunction restraining the defendant and his men from closing the entry into the plaint 'C' schedule 'IJKL' area or otherwise cause further construction over the said area as an easement of prescription.

6) Originally the petitioner had filed the main suit in the representative capacity for themselves and on behalf of other residents of the Murungavilai Locality.

7) Insofar as the counter averments state that the 'C' scheduled property is the private patta land of this respondent. Neither the petitioner nor the people of the Marungavilailocality have used the respondent's property as a pathway at any point of time. In any view of the matter, the petition cannot be entertained by this court; deciding the same in the above interlocutory applications will be touching upon the merits of the original suits. The same is not warranted at this stage.

8) Further in this IA on 30.04.2024 public notice was issued to the public in general, and as there was no objection. Further in *Gafuralli Sayad Anwar vs MohiddinShamsuddin* reported in AIR 1932 BOMBAY 65, it has been held as follows:

“....Order I, Rule 8, does not make any suit bad or good. It only provides for a case where a number of persons are interested in a suit. A means is devised by which such a suit may be placed before the Court with greater facility....”

9) In view of the discussions made above and in view of the law as explained by the Honourable Bombay High Court, this court is of the considered view that the above petition is allowed.

10) **As a result**, this petition is allowed. No costs.

Dictated to the steno-typist, typed by her in the Computer directly, printed, corrected and pronounced by me in open court this the 16th day of November, 2024.

Sd/-

Principal District Munsif,
Nagercoil.

List of witness and documents for Petitioner side : Nil

List of witness and documents for Respondent side : Nil

Sd/-

Principal District Munsif,
Nagercoil.

*PDM, Nagercoil.
Draft/Fair common Order
I.A.No. 1/2024 &
O.S.No.37/2024
Date: 16.11.2024.*