

IN THE COURT OF THE II ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.

Present : Tmt. M.Alima, B.A., L.L.M.,

II Additional District Munsif, Nagercoil (FAC)
Tuesday, on the 19th day of November, 2024

I.A. No. 8 of 2024 in
O.S. No. 94 of 2020

K.S. Suja

Rep. By Power holder

L.Piraisoodumperumal Pillay

... Petitioner/Plaintiff

-vs-

1. Adheenakartha Avrakal

Thirukailaya Paramparai

Thiruvavaduthurai Atheenam Mutt,

Thiruvavaduthurai

2. The Inspector,

Thiruvavaduthurai Athheenam Mutt,

Suchindrum.

... Respondent/Defendants

This petition came up before me on 13.11.2024 for a final hearing in the presence of Thiru. P. Palavesamuthu Advocate for the Petitioner/Plaintiff and in the presence of Thiru. V. Kumaran Nair, Advocate for the Respondents/Defendants, and upon hearing both sides and upon perusing the case records and having stood over for consideration till this day, this Court delivers the following:

ORDER

The petitioner had filed the above petition under Order IX Rule 9 CPC, seeking to pass an appropriate order to restoration of the suit.

2) Gist of Averments in the Petitioner/Plaintiff's Petitions :

The petition had stated that the petitioner is the plaintiff in this suit and had filed the above suit for permanent injunction. The suit was posted on 26.02.2024 for the cross of PW1. The petitioner was absent on that day and the petitioner filed an adjournment petition and the same was dismissed. The reason is that plaintiff was absent from 07.12.2023 continuously for the past 7 hearings. Hence, the plaintiff is not interested in proceeding with the suit. The above suit is thus dismissed for default by this Court. The petitioner had filed a petition in I.A.No.6/2023 to direct the defendants to produce the documents which are necessary to the petitioner/plaintiff's case before the cross examination of PW1. This court after hearing both sides dismissed the petition on 01.07.2023. During the course of the proceedings of the case, it is necessary to file a Revision before the Hon'ble High Court Madras, Madurai Bench against the order and dismissal order in that I.A.No.6/2023. The petitioner had filed the copy application for that C.A.No.1763/2024 and C.A.No.1764/2024 and the copies were ready on 26.02.2024 and the petitioner immediately sent the certified copies to my advocate at Madurai in order to file a Revision Petition before the Hon'ble High

Court, Madras, Madurai bench. In those circumstances, the dismissal of the suit is causing hardship and loss to the petitioner. He will ready to proceed with the case without any default to the petitioner. A chance may be given to the petitioner to proceed with the case. Therefore, this court may be pleased to set aside the dismissal order of the suit dated 26.02.2024 and restore the suit in the file. Hence, the petition is to be allowed.

3. Gist of Averments in the 2nd Respondent had filed a counter, and the same has been adopted by the 1st Respondent:

The 1st Respondent had filed a counter stating that the suit is a frivolous one and that the same has been instituted by the plaintiff on frivolous and vexatious grounds and by concocting things in her favour. Having found that the plaintiff will be caught hold of for the falsity of pleadings and materials, the plaintiff has cunningly placed her husband before the court in the name of the power holder. Even the power holder was not ready for cross examination in spite of repeated opportunities given to him. As a matter of fact, the plaintiff and her power holder are playing hide and seek before the court and that they harboured a wrong notion that they could toy with the court as a laboratory and they made a maladroit effort to play possibly thinking that they can survive on the ventilator as long as they can. The averments made in the affidavit with regard to the I.A.No.6/2023 and the order thereon are one such maladroit efforts and those averments were ingeniously devised for the purpose of filing this

petition. Significantly, the present application seems to be filed by the plaintiff herself. It so, it is very much patent that the plaintiff is deliberately evading her appearance before the court and declining to submit herself for examination before the court. The plaintiff and her husband/power holder are under the wrong impression that they can appropriate Aadheenam property by submitting falsehood before the court without knowing the consequences thereon. In any view of the matter, the present application is lacking in its bona fides, and the petitioner has invented things thereon just to suit her claim. Hence, the respondents prayed to accept this counter and to dismiss the petition.

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

5) Heard both sides. Records perused. The petitioner filed the above suit for a permanent prohibitory injunction against the defendants, and the suit was dismissed on 26.02.2024, for non-appearance of the petitioner/plaintiff. The suit was posted on 26.02.2024 for the cross of PW1. The petitioner was absent on that day and the petitioner filed an adjournment petition and the same was dismissed. The petitioner had filed a petition in I.A.No.6/2023 to direct the defendants to produce the documents that are necessary to the petitioner/plaintiff's case before the cross-examination of PW1. This court, after hearing both sides dismissed the petition on 01.07.2023. During the course of

the proceedings of the case, it is necessary to file a Revision before the Hon'ble High Court Madras, Madurai Bench against the order and dismissal order in that I.A.No.6/2023. The petitioner had filed the copy application for that C.A.No.1763/2024 and C.A.No.1764/2024 and the copies were ready on 26.02.2024 and the petitioner immediately sent the certified copies to my advocate at Madurai in order to file a Revision Petition before the Hon'ble High Court, Madras, Madurai Bench. In that said circumstance, the dismissal of the suit. Hence, the petitioner/plaintiff is not able to appear before this Court on 26.02.2024.

6) But in order to prove the same, no documents were filed. However, with a view to giving one more opportunity to the petitioner/plaintiff and deciding the case on merit, this court is inclined to allow this petition with conditional costs.

7) As a result, this petition is allowed, on the condition that the petitioner shall pay a sum of Rs.1,000/- (Rupees One Thousand only) to Respondents on or before 27.11.2024; otherwise, this petition would be dismissed. Call on 27.11.2024;

Dictated to the Steno-Typist directly, transcribed and typed by her in computer, corrected and pronounced by me in Open Court, this the 19th day of November 2024.

sd/-
II Additional District Munsif (FAC)
Nagercoil.

Petitioner side witness & Documents : Nil

Respondents side witness & Documents : Nil

sd/-
II Additional District Munsif (FAC)
Nagercoil.

I.A.No. 8/2024 &
O.S.No.94/2020
Fair Order
Date: 19.11.2024.
II ADM Court, Nagercoil.

I.A.No.8 of 2024 in O.S.No.94 of 2020

Order Pronounced:

Dated: 19.11.2024

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II ADM (FAC)