

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

Present: Thiru. R. Sundara Kamesh Marthandan, M.L.,
I Additional District Munsif, Nagercoil.

Tuesday, on the 12th day of November, 2024.

I.A. No. 8 of 2024

in

O.S. No. 196 of 2019

CNR.No. TNKK04-000315-2019

Kamila

... Petitioner/Defendant

-vs -

1. Addl.2 Banumathi @ Krishnammal

2. Addl.3 Arumugam

3. Addl.4 Subash Chandran

...Respondents/Plaintiffs

This Petition came before this Court on 04.11.2024 for final hearing. Mr. K.Retnasamy, Learned Counsel for the Petitioner and Mr.R. Thenkarai Maharajan, Learned Counsel for the Respondents and upon perusing the case records and having stood over till date for Consideration, this Court hereby delivers the following:

ORDER

1. The Petitioner had filed the above Petition under Order XXVI Rule 9 and Section 75 Code of Civil Procedure seeking an order to appoint an Advocate Commissioner to make local inspection of the Petition Schedule Property and file report by answering the following points.

1. To measure the 42 cents of paddy field, belonging to the Defendant, with reference to survey plan.
2. To note the nature of the property.
3. To note whether there is any pathway through property of the Defendant, for access to the Plaintiff's property.
4. To note whether lorry and other vehicles can to travel through the Defendant's paddy field.
5. To note such other points, the Defendant may require at the time of the Commissioner's visit.

2. The above Petition has been filed by the Defendant, stating that the Respondent/Plaintiff had filed the vexatious and frivolous suit. The Petitioner claimed that the Respondent/Plaintiff is trying to protract the proceedings, for one reason or other. The Petitioner had further stated that he owned one acre of Paddy field and that on 17.12.2013, the Government of India had acquired 58 cents out of the total property and the remaining land, is lying with full of bushes. The Petitioner/Defendant is unable to cultivate, because all the water kals, have been closed and there is no source of water to cultivate. The Respondent/Plaintiff had cleverly and stealthily put up 'Kavootai'. There is no cartable or motorable road inside the Petitioner's property. In such circumstances the Petitioner seeks Appointment of Commission to note the physical features of the Petition schedule property and to note whether there is any pathway, inside the Paddy field, owned by

the Petitioner, failing which the Petitioner will be put to irreparable loss and damages. The Petitioner claimed to read the plaint averments as part and parcel of this affidavit and prayed to allow the Petition.

3. The Respondent Counsel had endorsed no counter in the Petition docket.

4. The point consideration is Whether the above Petition has to be allowed or not ?

5. The suit has been filed by the Respondent/Plaintiff seeking declaration of title over the pathway, available in 'B' schedule property, based on prescription and for Permanent Injunction, restraining the Petitioner/Defendant, from disturbing the Respondent/Plaintiff, using the said pathway. The burden to prove the said claim, rests on the Respondent/Plaintiff. However the Respondent/Plaintiff had not entered the witness box and let in any evidence, so far.

6. Though the Petitioner/Defendant had contended that the Respondent/Plaintiff is protracting the suit proceedings, the Petitioner/ Defendant himself had come up with the above Petition, seeking issuance of Commission, during the year 2024, after lapse of five years, from the date of filing of the above suit, Unmindful of the fact that issuance of Commission, will further protract the suit proceedings and also unmindful of the fact that, it is the burden of the Respondent/Plaintiff to prove his suit claim. By filing the above Petition, the Petitioner/Defendant had opted to shift the burden on his shoulder. The same is not permissible under law.

7. Moreover the Petitioner/Defendant's case is there is no pathway i.e. no cartable or motorable pathway in the plaint 'B' schedule property. As such for proving such negative averment, issuing Commission will not be proper. In view of the discussions made above, this Court is of the considered view that the above Petition is a misconceived and unwanted one. As such the Petitioner is not entitled for the Petition relief.

In the result, the above Petition is dismissed.

No cost.

Dictated to the Steno-Typist, transcribed and typed by her in Computer, corrected and pronounced by me, in Open Court this, the 12th day of November, 2024.

Sd/-

I Additional District Munsif,
Nagercoil.

Petitioner side witnesses & documents : Nil.

Respondent side witnesses & documents : Nil.

Sd/-

I Additional District Munsif,
Nagercoil.

*I ADMCourt, Nagercoil.
Draft/Fair Order in
I.A.No.8/2024 in
O.S. 196/2019
Date:12.11.2024*