

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

Present: Thiru. R. Sundara Kamesh Marthandan, M.L.,

I Additional District Munsif, Nagercoil

Wednesday, on the 22nd day of January 2025

I.A.No.2 of 2019

in

O.S.No.196 of 2019

CNR No. TNKK04-000315-2019

1. Murugan (Died)

2. Banumathi @ Krishnammal

3. Arumugam

4. Subash Chandran

(2 to 4 Petitioners were impleaded as per order
made in I.A. No. 6/2023 dated 15.06.2023)

... Petitioners/Plaintiffs

-vs-

Kamila

... Respondent / Defendant

This Petition came before this Court on 19.11.2024 for final hearing in the presence of Mr. R. Thenkarai Maharajan, Learned Counsel for the Petitioners and Mr. K. Retnasamy, Learned Counsel for the Respondent. Upon hearing the Petitioner's side Counsel and Upon perusing the case records and having stood over, till date for Consideration, this Court hereby delivers the following:

ORDER

1. The Petitioners have filed the above Petition under Order XXXIX Rule 1

and 2 and Section 151 Code of Civil Procedure seeking Permanent Injunction.

2. The Petitioners have stated that they have filed the above suit, seeking to declare his title over the Plaint 'B' schedule property and Permanent Injunction restraining the Defendant from interfering with the Plaintiffs from using the Plaint 'B' schedule property. The Plaint 'A' schedule property was acquired by the Plaintiff under Will dated 27.05.1999 bearing Doc. No. 49 of 1999, Edalakudi Sub Registrar Office, executed by the Plaintiff's mother Chinnammai. She died on 14.11.2001. The Will came into effect. The Plaintiff obtained Patta and had been paying kist and have been in absolute possession. The suit property is divided into 'A' & 'B' schedules.

3. The 'B' schedule property, is the pathway to reach 'A' schedule property. The extent of 'A' schedule property is Fourty cents comprised in New Sy. No. 25/5 Eraviputhoor Village covered in Patta No.619. Earlier it was Paddy field, later converted into Coconut Garden. The Property situated on the North of the 'A' schedule property, belong to Asiramam Village Trust. The 10 feet pathway, adjoining the said Property is the 'B' schedule property. The Plaintiff and his predecessors and Paramarthalingam's family members have been using the said pathway for Sixty years and enjoying the same. When the Plaintiff and Paramarthalingam's properties were Paddy fields and later converted as Coconut Garden, they have been using the 'B' schedule property, as pathway, for transmitting the agriculture produce, manure, seeds and coconut, through vehicle and tractors.

4. There is no other pathway for 'A' schedule property, except 'B' schedule pathway. On the three sides of 'A' schedule property, the garden of other persons are

situated. The Defendant had grabbed the Trust property, by creating false documents. Now he attempts, to encroach the 'B' schedule pathway also. He had put tree branches and thorns in the 'B' schedule property. Hence the Plaintiff, could not go to 'A' schedule property and take manures through it. The Defendant is closing 'B' schedule pathway, with the malafide intent to encroach 'A' schedule property.

5. The Petitioner questioned the Respondent on 23.09.2019 directly, the Respondent refused to answer. On 24.09.2019, the Petitioner gave Complaint at Police Station. Since it is civil dispute, the Petitioner was directed to approach the Civil Court. Hence with no other way, the above suit has been filed. Hence this Court has to grant Permanent Injunction, restraining the Defendants from interfering with Plaintiffs' possession. Hence the above Petition.

6. The Respondent had filed counter, stating that the Petitioners' claim that 'B' schedule property is a 10 feet pathway is false. There is no such pathway. There is no 10 feet pathway, inside the Paddy fields of the Respondent. The Respondent's property is a Paddy field. There is no well defined pathway, for the Petitioners to have ingress and egress. The Petitioners' claim that tractors and vehicles, were vending their ways, through the Respondent's Paddy field, is false. The Respondent's properties are double cropped Paddy field. The Highway Authorities have acquired large portion of Respondent's property. The Respondent's property and the Paddy field have been cut into two portions. The water kals and bunds were badly damaged and Paddy cultivation could not be done. Thorny bushes are growing.

7. Taking advantage of the Respondent's absence, the Petitioner has put up a

new enclosure, with iron barbed wire fence and tin sheet, to create some entrance. It is false claim that the Petitioners' lodged a complaint with Sucheendrum Police Station. It is the Respondent who lodged a complaint against the Petitioners. The police have inspected and found that there is no pathway and the Petitioners have no right over any portion of the property.

8. The Respondent took step to measure the property, through Taluk Surveyor. The Petitioner and his son Vikram Arumugam, who is working as Deputy Tashsildar made hindrance to measure the property by using his position. In Field Measurement Book, there is no entrance, in the property. During land acquisition, the said property was classified as wet land, by National Highway Authority of India and compensation was paid accordingly. The Petition is not maintainable and liable to be dismissed.

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

10. First and foremost, in the above Interlocutory Application, the Petitioner had sought for Permanent Injunction i.e. the very suit prayer No.2 has been sought for in the above Interlocutory Application. On this sole ground, the Petitioner is not entitled for the above Petition relief. That apart, the Petitioners have not pleaded, any facts regarding irreparable injury and balance of convenience. The Petitioners' claim as to no alternative way, to reach Plaint 'A' schedule property and the claim that the Petitioner his pre-decessor and Paramarthalingam family members were using the Petition 'B' schedule property, as pathway, for more than sixty years and the Respondent's denial, stating that the Petition 'B' schedule property, is the Paddy Field

have to be adjudicated only in the suit and not in the above Interlocutory application. In view of the discussions made above, this Court is of the considered view that the Petitioners are 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 the Computer, corrected and pronounced by me, in open Court this, the 22nd day of January, 2025.

I Additional District Munsif,
Nagercoil.

Petitioners' side witnesses & documents : Nil.

Respondent's side witnesses & documents : Nil.

I Additional District Munsif,
Nagercoil.

*I ADMCourt, Nagercoil.
Draft/Fair Order in
I.A.No.2/2019 in
O.S.No. 196/2019
Date:22.01.2025.*