

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

Present : Selvi. V. Sivaranjani, B.A., L.L.B.,

II Additional District Munsif, Nagercoil

Thursday, on the 29th day of January, 2025

I.A. No. 6 of 2025 & I.A.No.7 of 2025 in

O.S. No.8 of 2025

CNR No.TNKK04-000008-2025

1. Charles
2. Siria Pushpam
represented by her power of Attorney Holder
Chenthilvel

... Petitioners / Plaintiffs

-vs-

1. Robert Nelson
2. Efreme Indira
3. Inbam
4. Sharmila
5. Sekar Elango
6. Mariya Roseline
7. Maxlin Rethinam (Minor)
8. Emin Jerosse (Minor)

(Respondents 7 and 8 are minors and
they are represented by their mother
cum natural guardian Mariya Roselin
(6th Respondent)

... Respondents / Defendants,
Proposed Parties

These Petitions came up before me on 22.01.2026 for final hearing in the presence of Thiru. P. Brightwin Xavier, Advocate for the Petitioners/Plaintiffs and Thiru. Justin Advocate for the 1st to 5th Respondents, 6th to 8th Respondents, called absent, set exparte 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:-

COMMON ORDER

Prayer in I.A. No. 6 of 2025:

The petitioners have filed the above petition Under Order XXXII Rule 3 and Section 151 of the Code of Civil Procedure, seeking to pass an order to appoint the 6th respondent as the guardian of the minor respondents 7 and 8 for the purpose for the above suit proceedings.

Prayer in I.A. No. 7 of 2025:

The Petitioners have filed under Order 1 Rule 10(2) and Section 151 of the Code of Civil Procedure, seeking to pass an order to implead the proposed parties as additional defendants 6 to 8 in the suit.

2) Gist of Averments in the Petitioners/Plaintiffs Petitions :

The petitioner is the 1st plaintiff in this suit. Petitioner filed this affidavit for my behalf and on behalf of the 2nd plaintiff. The Petitioners / Plaintiffs have filed this suit for declaration declaring that the plaint 'D' schedule property is the

pathway for the plaint A & B schedule properties and for mandatory injunction directing the 1st defendant to demolish and remove the illegal constructions made in the plaint 'D' schedule property. If the 1st defendant failed to do so even after the decree the plaintiffs may be permitted to demolish and remove the obstructions through execution proceedings and recover the cost of the same from the 1st defendant and for permanent injunction restraining the defendants and their men and agents from obstructing plaintiffs from using the plaint 'D' schedule property as pathway in any manner.

3. Now, petitioners came to know that the respondents 6 to 8 are having right over the plaint 'C' schedule property. So, petitioners filed a separate application praying an order to implead the respondents 6 to 8 as additional defendants 6 to 8 in the suit.

4. The petitioner is the owner in possession of the plaint 'B' schedule property. Petitioner acquired absolute right title and possession over the plaint 'B' schedule property as per the Will deed dated 14.09.1998 executed by petitioner's father late Antony Nadar. The 2nd plaintiff is the owner in possession of the plaint 'A' schedule property as per the Will deed dated 18.04.1994 registered as document No.42/1994 of Sub Registrar's Office Eraniel. The plaint 'D' schedule property is the only source of ingress and egress to the plaint 'A' & 'B' schedule properties. The plaint 'D' schedule property is the part and parcel of the plaint 'C' schedule property.

5. The 1st defendant blocked the pathway and denied our right of using the pathway. The defendants 2 to 5 are the siblings of the 1 defendant and they are claiming right over the plaint 'C' schedule property and the pathway. So, petitioners/plaintiffs filed the above suit.

6. Meanwhile in the last week of August 2025 the 1st proposed party came to the plaint 'C' schedule property and attempted to block the pathway. When petitioners restrained the above act by stating the interim injunction order, she replied that she is one of the title holders of the plaint "C' schedule property.

7. On enquiry petitioners came to know that the proposed parties have right over the plaint 'C' Schedule property as follows; Originally, the plaint 'C' Schedule property belonged to one late Rethinam Nadar. Upon his demise, the said property devolved upon his wife, (Antony Ammal), and his children, namely Robert Nelson, Efreme Indira, Inbam, Sharmila, Seker Elango, and Jeyakumar. Subsequently, Jeyakumar died intestate on 04.11.2024, leaving behind his wife R. Mariya Roseline and two children, J. Maxlin Rethinam and J. Emin Jerosse as his legal heirs.

8. As stated supra, all the legal heirs of the late Rethinam Nadar, including the legal representatives of his deceased son, R. Jeyakumar, are co-owners and joint holders of title in respect of the plaint "C' Schedule property, which includes the aforementioned portion of the pathway forming part of the

access to the plaint A & B schedule properties. At the time of institution of the present suit, the plaintiffs, under a bonafide belief and due to lack of complete information, impleaded only the surviving children of late Rethinam Nadar as defendants. However, it has now come to the Plaintiffs' knowledge that the said Rethinam Nadar had another son, R. Jeyakumar, whose legal heirs were not impleaded earlier due to lack of knowledge regarding his rights and legal status.

9. The non-joinder of the legal heirs of late R. Jeyakumar at the time of institution of the suit was neither intentional nor deliberate but solely due to ignorance of the said facts. In view of the above, it is just and necessary for the proper and complete adjudication of the issues involved in the suit that the legal heirs of late R. Jeyakumar, being co-owners of the plaint 'C' Schedule property, be impleaded as additional defendants to the suit.

10. As the 7th & 8th respondents are minors they are represented by their mother cum natural guardian the 6th respondent. The 7th respondent is studying 11th standard and the 8th respondent is studying 9th standard. Now the minor respondents 7 & 8 are under the control and custody of the mother cum natural guardian the 6th respondent.

11. The 6th respondent is the fit and proper person to be appointed as the guardian of the minor respondents 7 & 8. A separate petition praying for an order to appoint the 6th respondent as the guardian of the minor respondents 7 & 8 has been filed along with this petition that may be allowed. Under these

circumstances it is just and necessary that this court to implead the proposed parties as additional defendants 6 to 8 in the suit, otherwise irreparable loss and hardships will be caused to us. Hence, these petitions are to be allowed.

12. **Gist of Averments in the 1st Respondent 's Counter:**

The counter filed by the 1st Respondent and adopted by the 2nd to 5th Respondents.

13. The 1st respondent filed counter stating that the petition is not maintainable as it has been filed only with the view to drag on the proceedings. The proposed parties are no way connected with the matter in dispute in this suit. This proposed party have got nothing to do with plaint schedule property.

14. The property through with these plaintiffs/petitioners claim pathway right is the exclusive property of the mother of this respondent and she has given into the 1st respondent by executing valued documents. She purchased the property by paying entire sale consideration through which only these respondents have access to their property.

15. The proposed parties are the wife and children of deceased younger brother of this respondent Jeyakumar. He died long prior to the filing of this suit. But the petitioners did not bother to implead them as parties to the suit. As such there is no bonafide in this petition. Knowing well that the claim of these petitioners in the suit is flimsy and the plaint averment are false they did not bother to implead the proposed parties in the suit. The petition praying this court

to appoint 1st proposed party as the guardian of the minor proposed parties who are her son and daughter also is not sustainable as they are not necessary parties to this suit. The affidavit filed along with the petition does not dispersed any valid ground for availing this petition. Hence, to accept the counters and dismissed these petitions.

16) The point for consideration is whether the above petitions have to be allowed or not.

17) Point:

Heard both sides. Records perused. Upon consideration of the pleadings, affidavits, and submissions on either side, this Court finds that the plaint 'C' schedule property, which admittedly includes the plaint 'D' schedule pathway forming the only ingress and egress to the plaint 'A' and 'B' schedule properties, originally belonged to late Rethinam Nadar and devolved upon his legal heirs, including his deceased son R. Jeyakumar, whose undivided share has now devolved upon respondents 6 to 8 as his legal representatives. The materials on record disclose that the said legal heirs have not impleaded at the time of institution of the suit was neither willful nor deliberate but due to bona fide lack of knowledge, and their subsequent assertion of rights over the plaint 'C' schedule property establishes that they are necessary and proper parties for the effective and complete adjudication of the issues involved.

18. The objections raised by the respondents do not outweigh the requirement of avoiding multiplicity of proceedings and ensuring that all co-owners are bound by the outcome of the suit. Further, as respondents 7 and 8 are minors under the care and custody of their mother, the 6th respondent, who is their natural guardian and against whom no adverse interest is shown, this court is satisfied that she is a fit and proper person to represent them in these proceedings. Accordingly, this court is inclined to allow these petitions to implead respondents 6 to 8 as additional defendants and to appoint the 6th respondent as the natural guardian of the minor respondents 7 and 8 for the purpose of this suit.

As a result,

I.A. No. 6 of 2025

This petition is allowed. No cost

I.A. No. 7 of 2025

This petition is allowed. No cost

Dictated to the Steno-Typist directly, transcribed and typed by her in computer, corrected and pronounced by me in Open Court, this the 29th day of January, 2026.

II Additional District Munsif
Nagercoil.

Petitioners side witness & Documents : Nil

Respondents side witness & Documents : Nil

II Additional District Munsif
Nagercoil.

I.A. Nos.6,7 of 2025
in
O.S. No.8 of 2025
Fair Order
Date: 29.01.2026.
II ADM Court, Nagercoil.