

In the Court of the II Additional District Munsiff, Nagercoil

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

Monday, on this the 22nd day of July 2024

I.A. No.5 of 2023

in

Original Suit No.92 of 2011

CNR No.TNKK04-000538-2011

Sundarlingam

..... Petitioner/Plaintiff

-vs-

1. Rajavel

2.(The Executive Officer
Thengamputhoor Town Panchayat
Thengamputhoor)

Substituted

The Commmissioner,
Nagercoil Muncipal Corporation,
(Amended as per Order in
I.A.No.6 of 2024 dated 29.02.2024.

..... Respondents/Defendants

This Petition came up before this Court on 10.07.2024.
Thiru.K.Subhakaravel Advocate for the Petitioner and Thiru. T.Jayachandran for
the 1st Respondent. Thiru Samuvel Edwin for the 2nd Respondent. The 2nd
Respondent set exparte and upon perusing the case records and having stood over
for consideration till this day, this Court delivered the following:

ORDER

1. The Petitioner had filed the above Petition under Order VI Rule 17 and Section 151 CPC., seeking an Order to amend the Plaint B schedule Property by substituting the Resurvey Numbers 261/1, 10,11 and 267/6 for the existing Re.Sy. Number.

2. The Petitioner had stated that he had filed the above suit for declaration of title over the Plaint A Schedule property and for injunction restraining the defendants from disturbing the Plaint A schedule Property and from encroaching the A schedule property and annexing the same with the Plaint B schedule property and putting up tar. The Petitioner had stated that he was allotted the Plaint "A" schedule property, measuring an extent of 13 cents, under Partition Deed dated 16.01.1976, bearing Doc. No. 20 of 1976.

3. The Plaint B schedule property is the eastern pathway, lying on the Northern Side of Plaint A Schedule Property. With an intention to make the eastern pathway into a Tar Road, the 2nd defendant started work on the pathway, by encroaching portions of the Plaint A Schedule property. That had necessitated the Petitioner to file the above suit. The resurvey number of the Plaint B schedule property is 261/1,10,11 and 267/6. However by oversight the Petitioner had mentioned the same as 261/1. Further the commissioner has visited the property had filed interim report and mentioned the resurvey number of the Plaint A

Schedule property in his interim report. Since mistake occurred, by way of oversight, the same has to be corrected. Hence the Petitioner had filed the above Petition. Unless, the above Petition is allowed, the Petitioner will be put to irreparable loss and hardship.

4. The 1st respondent had filed counter stating that the extent of Plaintiff A schedule property is less than 8 cents and not 13 cents, as alleged by the Petitioner. The Plaintiff B schedule property is the eastern pathway. In order to convert the Plaintiff B schedule property into a tar road, the 2nd defendant made arrangements to measure the B schedule property and it was found that the Petitioner had encroached the Plaintiff B Schedule property. With intent to save the encroached portion, the Petitioner has filed the above suit.

5. In paragraph No. 6 of the Affidavit filed in support of the above Petition, the Petitioner had mentioned as 'A' schedule and in some places he had mentioned as 'B' schedule. In I.A. No. 2 of 2022, this Court had stated that the correlation certificate, SLR and A Register were not filed by the Petitioner. Hence this Court had dismissed that Petition, which was filed seeking appointment of a Fresh Commissioner. The earlier Commissioner had also filed a preliminary report. The Petitioner had not co-operated with the Commissioner. Hence the said Petition was dismissed. The above application has been filed in a confused status. Whether the amendment sought for is in Plaintiff A schedule or in Plaintiff B schedule

is not properly mentioned and the owners of those properties are not properly mentioned. The above Petition has been filed only nor on drag on the suit. The 1st Respondent prayed for dismissal of the above Petition. On 27.11.2023, the learned Government Pleader filed Memo, stating the 2nd Respondent Tengamputhoor Town Panchayath merged with Nagecoil Corporation. In pursuant to the said memo, the Petitioner filed I.A. No. 6 of 2021 and got the Commissioner Nagercoil Corporation substituted in the Place of Executive Officer, Tengamputhoor Town Panchayath. However the 2nd respondent had not filed counter in the above Petition.

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

7. Since there are some over writing in paragraph 6 of the affidavit filed in support of the above Petition, 'The points to be amended' stated in the Petition was perused. Even in that 'Points to be amended,' there is some over writing i.e. the letter 'A' has been overwritten with the letter 'B'. The same would only go to show that the above Petition has been filed seeking leave to amend the Plaint B schedule property. In order to see whether such amendment is necessary for adjudication of the above suit, the suit prayer was perused. In the Plaint, the Petitioner had prayed for declaration to declare his title over the Plaint A schedule property and had also sought for Permanent Injunction in respect of Plaint A

schedule property. In the Permanent Injunction Prayer, the Petitioner had mentioned the Plaintiff B Schedule property, and sought for injunction from annexing the Plaintiff A Schedule Property along with Plaintiff B schedule property.

8. With regard to the additional prayer in Plaintiff B prayer i.e. not to annex the same with the Plaintiff B schedule property, the Plaintiff's alleged right is said to be over Plaintiff A schedule property and as such his prayer for declaration and injunction is restricted to Plaintiff A schedule property alone. The same would suffice to address his grievance. However for reason best known to him, the Petitioner/Plaintiff had made such additional prayer in the Permanent Injunction relief. In the suit for declaration of title and Permanent Injunction in respect of Plaintiff A schedule property, the fact as to the purpose for which the alleged encroachment is proposed to be made and the owners of such property, along which the portion of Plaintiff A schedule property is said to be annexed are irrelevant.

9. As contended by the 1st Respondent's counsel, the Petitioner had not pleaded as if the survey numbers ought to be incorporated are owned by the 1st Respondent/Defendant himself. In such circumstances the said Additional Prayer itself is not necessary. As such, the above Petition seeking to amend the survey number in Plaintiff B schedule is also not necessary. Not allowing the above

amendment Petition will in no way cause prejudice to the Plaintiff, while adjudicating the above suit.

10. Further the above suit is of the year 2011. The trial had not yet commenced. The Petitioner had come before this Court with the above amendment application in the year 2023. The Petitioner had referred one interim Commissioner Report. However he had not stated as to when the said application was filed and when such Interim Commission Report was filed. He had also not stated the relevancy of the said Interim Report for adjudicating the above I.A. The respondent had contended that the subsequent application filed by the Petitioner, seeking issuance of Commission again had been negated by this Court. In such circumstances, the act of the Petitioner coming with the above Petition, after lapse of 12 years from the date of suit, gives inference that the Petitioner is not bonafide and that the proposed amendment is not required for due adjudication of the suit. Hence 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 22nd day of July 2024.

Sd/-R.Sundarakamesh Marthandan
II Additional District Munsif
Nagercoil.

Petitioner side witness & Documents : Nil

Respondent side witness & Documents : Nil

Sd/-R.Sundarakamesh Marthandan
II Additional District Munsif
Nagercoil.

I.A. No.5 of 2023
in
O.S. 92 of 2011
Fair Order
Date : 22.07.2024