

**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)
Monday, on the 16th day of December, 2024

I.A. Nos. 9 of 2024 & 10 of 2024

in

O.S. No. 92 of 2011

Sundarlingam

... Petitioner/Plaintiff

-vs-

1. Rajavel

2. The Commissioner,

Nagercoil Municipal Corporation.

... Respondents/Defendants

These petitions came before me on 06.12.2024 for a final hearing in the presence of Thiru. K. Subhakaravel, Advocate for the Petitioner/Plaintiff, and Thiru. A. Samuvel Edwin, Advocate for the 2nd Respondent/2nd Defendant, and 1st Respondent/1st Defendant was set ex parte, 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

I.A.No.9/2024 Prayer

The petitioner had filed the above petition under Section 151 of the Code of Civil Procedure, seeking to accept the reopen petition in the interest of justice.

I.A.No.10 of 2024 Prayer

The petitioner had filed the above petition under Order XVI Rule 6 and 7 of the Code of Civil Procedure, seeking to permit the petitioner to examine the scheduled witness in the interest of justice.

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

The petitioner is the plaintiff in the suit, and the plaintiff had filed this 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 annex the same with the plaint 'B' schedule property and putting up tar. The petitioner had allotted the plaint 'A' schedule property through the partition effected among petitioner and petitioner's brother and father on 16.01.1976, through the Edalakudy Sub Registry as document No.20/76. The petitioners submit that right from the date of partition, the petitioner entered into the plaint 'A' schedule property exclusively which has an extent of 13 cents. The petitioner submit that the old revenue records are showing the extent of the plaint 'A' schedule of property is 13 cents. In order to prove the extent of the property the examination of the village administrative officer of the Agasteeswaram is a important witness. Hence, he is to be examined before the court by producing the old revenue documents. If the above said witness is not examined, the petitioner will be put

into irreparable loss and hardship. On 20.11.2024, the case was posted for the plaintiff side for further evidence, but due to the petitioner's illness, the petitioner was unable to appear before this court and not produce the further witness before this court on that day. The non-produce witness is not willful nor wanton. Therefore, it is prayed that this court may be pleased to reopen the case for the plaintiff side for further evidence. If the petitions are not allowed, the petitioner will be put into irreparable loss and hardship. In the above said circumstances, it is most humbly prayed that this court may be pleased to reopen the case and allow the petitioner to examine the scheduled witness in the interest of justice. Hence, these petitions are to be allowed.

3) Gist of the Averments in the 2nd Respondent/2nd Defendant's Counter:

The 2nd Respondent/2nd defendant had filed a counter stating that the allegations in the affidavit are not correct. It is submitted that even after several adjournments given to the petitioner, the petitioner did not proceed with the case, only to delay and prolong the case with this frivolous petition that is filed. There are no bona fide allegations in the affidavit. There is no merit in the petition. The petition is not maintainable in law and on facts. Hence, the respondents prayed to accept this counter and to dismiss these petitions.

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

5) Point:

Heard. Records perused. This petition had been filed by the petitioner, while the original case has been adjourned for the 1st defendant's side evidence. The petitioner had stated that due to the illness, the petitioner could not appear before this court, and so if the petitioner/plaintiff side is not reopened and other evidence is not allowed to be examined, the petitioner will be seriously prejudiced, and it will affect the adjudication of the suit.

6) Further, The petitioner had stated that the important witness to the Village Administrative Officer, Agasteeswaram Village, Agasteeswaram & Post, Agasteeswaram Taluk, Kanyakumari District, was to appear and give oral evidence producing the old revenue documents in this case.

7) This court considers that the witnesses mentioned in the petitioner's petition are necessary to decide the original case and to give the petitioner sufficient opportunity to prove his case. Hence, this Court inclined to allow these petitions on conditional cost.

8. As the result,

I.A. No. 9 of 2024:

This petition is allowed, on the condition that the petitioner/Plaintiff shall pay a sum of Rs.250/- (Rupees Two Hundred and Fifty only) payable to the 2nd respondent/2nd defendant on or before 19.12.2024. otherwise, this petition would be dismissed. Call on 19.12.2024.

I.A. No. 10 of 2024:

This petition is allowed, on the condition that the petitioner/Plaintiff shall pay a sum of Rs.250/- (Rupees Two Hundred and Fifty only) payable to the 2nd respondent/2nd defendant on or before 19.12.2024. otherwise, this petition would be dismissed. Call on 19.12.2024.

Dictated to the Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 16th day of December, 2024.

II Additional District Munsif, (FAC)
Nagercoil.

Petitioner side witnesses and documents : Nil.

Respondents side witnesses and documents : Nil.

II Additional District Munsif (FAC)
Nagercoil.

Fair/ Draft common Order
I.A.No.9 of 2024 and
I.A.No.10 of 2024
in
O.S.No.92 of 2011
Date: 16.12.2024.
II ADM(FAC), Nagercoil.

I.A. No. 9 of 2024 in O.S.92 of 2011:

Common Order Pronounced:

Dated: 16.12.2024

As a result,

This petition is allowed, on the condition that the petitioner/Plaintiff shall pay a sum of Rs.250/- (Rupees Two Hundred and Fifty only) payable to the 2nd respondent/2nd defendant on or before 19.12.2024. otherwise, this petition would be dismissed. Call on 19.12.2024.

II ADM (FAC)

