

IN THE COURT OF DISTRICT MUNSIF, METTUR, SALEM DISTRICT

Present: **Thiru. M.Selvam, B.A., B.L.,**

District Munsif, Mettur

Wednesday, this the 08th day of April 2026

I.A.No. 11 of 2026

in

O.S. No. 140 of 2016

(CNR. No. TNSA17-0000024-2016)

1. Rama

2. Parameswari

... Petitioners/Plaintiffs

-Vs-

Eswari

...Respondent/Defendant

This petition is heard in the presence of Mr. I.K. Sadhasivam., M.Com., M.L., the Learned counsel for the Petitioners/Plaintiffs and Mr. P. Siddan., B.A., B.L., the Learned counsel for the Respondent/Defendant. Enquiry heard on both sides and having stood over for my consideration till this day, this court delivered the following,

ORDER

Petition filed by the Petitioners/Plaintiffs under Order 23 Rule 1 of CPC to permit them to withdraw the suit with liberty to file a fresh suit on the same cause of action.

1. Brief facts in the petition filed by the petitioner is as follows:

1.1. The petitioners are the plaintiff in the original suit, which was filed for the relief of permanent injunction. The suit property is a Grama Natham land in the Gonur West Village, Mettur Taluk. The grandfather of the petitioners namely Alagappan acquired the suit property and after his demise, their family members were being in possession and enjoyment of the same for the past 54 years. The

petitioners are residing in Survey no. 851/18 of the same village, which is adjacent to the suit property. Totally, they are in possession and enjoyment of 2-1/2 cents in which they constructed a residential house.

1.2. The respondent is having property in Survey no. 851/22 and she got a separate pathway to reach her property. But the respondent is trying to encroach upon the suit property and gave lot of troubles to their possession. Hence, they filed the suit for the relief of permanent injunction. The revenue department did not disturb their possession till now and hence, they were advised only to file the suit for the relief of permanent injunction.

1.3. Now while the cross examination of PW1, the respondent raised a question that the Government is necessary party to the suit. At this juncture, it is necessary to implead the revenue department as parties in the suit and also it is necessary to sought for a declaration prayer. In this regard, they are necessary to amend the pleadings for proper remedy. The suit property is purely Natham land, but the respondent is always denying their title. Hence, this petition is filed to withdraw the suit with liberty to file a fresh suit on the same of cause of action with proper relieves and parties.

2. Brief facts in the counter filed by respondent/defendant is as follows :

2.1. The respondent/defendant denied the averments made in the affidavit filed by the petitioners. This petition is filed by the petitioners belatedly to avoid the pronouncement of judgment, which will go against them. In the suit, the petitioners had examined three witnesses and marked Ex.A1 to Ex.A6 and they

were also cross examined elaborately. Then the respondent/defendant was examined as DW1 and marked Ex.B1 to Ex.B6 and the case was posted for nearly nine hearings for the cross examination of the DW1.

2.2. Instead of cross examining the DW1, the petitioners had come forward with this petition. The respondent had also filed an application in I.A.No. 12 of 2026 under Order 26 Rule 9 of CPC for the appointment of advocate commissioner. Then only the petitioners had come forward with this petition on false grounds. If this petition is allowed, the respondent may not be able to prove the false case of the petitioner to grab the property of the respondent illegally. There is no merits in this petition and hence, it is liable to be dismissed.

3. No oral and documentary evidence on either side.

4. Submissions :

(i) The learned counsel for the petitioner/plaintiff had submitted that the suit property is a grama natham land and the government is a necessary party to the same and the same was also questioned during the cross examination of the PW1. Further, the respondent is denying the title of the petitioner in the suit property and therefore, the petitioner is inclined to withdraw the suit with liberty to file a fresh suit for the same cause of action with proper relieves and parties.

(ii) Resiting the same, the learned counsel for the respondent/defendant had submitted that the petitioner is not entitled to withdraw the suit with liberty, since it was filed belatedly. Further, the respondent had raised the defence of the non joinder of parties in the written statement filed by her in the year 2017 itself. More over, the stage of the case is for cross examination of DW1 and the

plaintiff side evidence is closed by examining three witnesses namely PW1 to PW3 on their side. At this juncture, this petition is not maintainable and liable to be dismissed.

5. Point For Consideration:-

(i) Whether the original suit can be allowed to be withdrawn with liberty to file an fresh suit on the same cause of action ?

6. Both side rival submissions heard and perused the pleading and materials on record. The original suit is filed by the petitioners/plaintiffs for the relief of permanent injunction restraining the respondent/defendant and her men from in any way interfering with the peaceful possession and enjoyment of the petitioners/plaintiffs and using the suit property.

7. The suit property is described in the plaint shedule as in Old Survey no. 137/2 with New Survey no. 851/17 to an extent of 562 sqft in Gonur West Village, Mettur Taluk. It is the case of the petitioners/plaintiffs as per their plaint pleadings that the suit property is a Grama Natham land and the same was occupied by the grandfather of the 1st petitioner and after his demise, the petitioners and their family members have been in possession of the same for the past 45 years. The petitioners are residing in Survey no. 851/18 under patta no. 205, which is situated adjacent to the suit property and they were in possession to an extent of 2-1/2 cents by constructing a house building therein.

8. It is the further case of the petitioners that the respondent/defendant, who is the 3rd party to the suit property on 30.07.2016 came along with rowdy element and illegally trespassed into the suit property and tried to dispossess the

petitioners and the said act was timely intervened by the neighbours. But while leaving, she challenged that she will dispossess the petitioners at any cost. Hence, this suit.

9. Admittedly, in the original suit, the trial has been commenced and the petitioners/plaintiffs had examined witnesses PW1 to PW3 and marked Ex.A1 to Ex.A6 and the witnesses were also cross examined by the respondent. Then the respondent/defendant was examined as DW1 and marked Ex.B1 to Ex.B10 and the stage of the case is for cross examination of the DW1.

10. At this juncture, the petitioners/plaintiffs had come forward with this petition to withdraw the suit with liberty to file a fresh suit on the same cause of action. It is the contention of the petitioners in this petition that while the cross examination of PW1, the respondent raised a question that the Government is necessary party to the suit and hence, it is necessary to implead the revenue department as parties in the suit and also it is necessary to sought for a declaration prayer, as such the suit property is purely Natham land and the respondent had denying their title.

11. The provision under Order 23 Rule 1 of CPC reads that the courts may allow the plaintiff to withdraw the suit with liberty to file a fresh suit in respect of the subject matter of the such suit, if the court is satisfied that the suit must fail by reason of some formal defect or that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the same subject matter.

12. On perusal of the case records, it shows that the respondent/defendant had raised the defence of non joinder of the Government as a necessary party to the suit, even in the written statement filed by her on 06.05.2017 itself. While

being so, the contention of the petitioners that the said question was only raised now during the cross examination of PW1 is not having a considerable force. Further, since a specific defence is raised by the respondent/defendant, even in her pleadings by way of written statement and had also contesting the case on the said point by cross examining the plaintiff side witnesses, the petitioners/plaintiffs cannot be permitted to seek the said defence as a formal defect on their part, at the stage, when the suit was posted for the cross examination of the defendant, who was examined as DW1.

13. The reason for seeking the relief of declaration prayer and the type of declaration needs to be sought for was also not clearly averred by the petitioners/plaintiffs and there was also no reason adduced in the petition averments, why the said defects could not be overcome by amending the pleadings in the plaint. This court forms opinion that the petitioners/plaintiffs had not raised any formal defect or shown any sufficient reason to withdraw this suit with liberty to file a fresh suit on the same cause of action as provided in the Order 23 Rule 1 of CPC.

14. The learned counsel for the petitioners/plaintiffs had relied on the judgment of **Our Hon'ble Madras High Court** in the case of **L. Vijay Anand and another vs N. Sujatha** reported in **2016 (2) CTC 9** and had submitted that the non joinder of necessary parties is only a technical flaw. This court had gone through the said judgment. In the said case, the suit is based on a will and at the second appeal stage, the plaintiff had come forward with an application to withdraw the suit with liberty to file a fresh suit on the same cause of action alleging that the non testamentary legal heirs in the absence of the disputed will dated 16.07.1986 is not added as a parties to the suit. The defendants therein had also claimed on a basis of another will dated 30.06.1992 executed by the

same person. In the said circumstances, Our Hon'ble Madras High Court had held that the said legal heirs could not dispute the said will as they are not made as parties to the suit and hence, it is only a technical flaw alone. But in this present case, the respondent already raised a plea of non joinder of the Government as a party to the suit even in their written statement, that too, in the year 2017 itself. Hence, the said judgment is not applicable to the present case on hand.

15. The learned counsel for the petitioners/plaintiffs had also relied on the judgment of **Our Hon'ble Madras High Court** in the case of **C. Vaiyapuri Gounder and others vs The Commissioner, HR and CE department, Chennai** reported in **(2005) 1 MLJ 44** and submitted that even in the appellate stage, the plaintiff can be permitted to withdraw the suit with liberty to file a fresh suit on the same of cause of action. This court had gone through the said judgment. In the said case, the plaintiff had sought liberty on the ground that the suit itself is filed only on behalf of the Perungudi Kulam Kongu Vellalargal and it should have been filed on behalf of the Perungudi Kulam Kongu Vellalargal living in Salem, Periyar and Coimbatore and since, the contest has been made in the written statement that the Poojarigal also have to be impleaded and thereby those formal defects have to be set right. In such circumstances, Our Hon'ble Madras High Court in order to avoid multiplicity of proceeding that may taken in future litigation either by the Poojaris or by the community people had allowed the said application. The said facts is also not applicable to the present case on hand.

16. The learned counsel for the respondent/defendant had relied on the observation of **Our Hon'ble Madras High Court** in the case of **Sabreesan vs Periyasamy Padiyatchi** reported in **2025 (3) MWN (Civil) 813** and had submitted that the liberty cannot be granted on a mere assertion of improper

relief or legal advice, if the formal defect or sufficient ground is not established by the plaintiff. This court had also gone through the said judgment. In this present case, the petitioners/plaintiffs had also not raised any formal defect or shown any sufficient ground to withdraw the suit as already held supra. Further, including the relief of declaration is also not properly pleaded by the petitioners/plaintiffs, why it could not be included by way of amendment. Such being the position, from the overhaul discussion and in the interest of justice, this court comes to the conclusion that this petition is liable to be dismissed.

In the result, this petition is dismissed. Considering the facts and circumstance of this case, there is no orders as to cost.

This order is typed by me in my official laptop, corrected and pronounced by me in open court on this 08th day of April 2026.

**District Munsif,
Mettur**

Both side documents and witnesses: Nil

**District Munsif,
Mettur**