

**IN THE COURT OF DISTRICT MUNSIF, KATPADI, VELLORE DISTRICT
PRESENT: THIRU. K.VENKATESAN, B.A., B.L.,
DISTRICT MUNSIF, KATPADI.**

Tuesday, this the 19th Day of March – 2024

**I.A.No. 3 of 2022
In
O.S.No. 10 of 2019
(CNR.No.TNVL23-000032-2019)**

1. G.Vilvanathan
2. V.Dakshinamoorthi

.....Petitioners/Defendants

-Vs-

1. T.S.Punniyakoti
2. T.S.Saravanan
3. S.Sampath
4. T.A.Sekar
5. A.Rudhran
6. N.Sridhar

.....Respondents/Plaintiffs

This petition has come up today before this Court for orders, and upon hearing the arguments of Thiru. S.Gunasekaran and G.Vijayabaskar, the Counsels for the Petitioners, and Thiru. V.Jothiram, the Counsel for the Respondents, and upon perusing the petition, counter and the entire case records, and having stood over for consideration till this date, this Court delivers the following:

ORDER

This petition has been filed by the Petitioners/Defendants under Order 7 Rule 11(a) and Section 151 of Code of Civil Procedure to Reject the Plaint.

1. **Brief averments of the affidavit filed by the 1st petitioner is as follows:-**

1.1 The 1st petitioner is the 1st defendant in the above Suit, and he filing this petition on behalf of the other petitioner also, and stated that the petitioners deliberately have not given the New Survey Numbers of the Suit 'A' Schedule to 'F' Schedule properties at the time of filing of the plaint, and they have given the Old S.No.155/2. In the Paragraph No.4 of the Written Statement itself, the petitioner has pleaded that there is no existence of S.No.155/2 of Kangeyanallore Village on the date of filing of the plaint.

1.2 The 1st petitioner is the owner of the property situate in S.No.453/40 (Old S.No.155/2) of Kangeyanallore Village as the same was purchased by his grand father namely Munusamy Mudaliar by way of a Registered Sale Deed dated 05.04.1940 for valid and binding consideration from one Veeraragava Mudaliyar. From the date of purchase, the 1st petitioner's grandfather was in possession and enjoyment of the same till his death, and thereafter the 1st petitioner's father was in possession of the same, and after his death, the petitioners are in possession and enjoyment of the property till date without any let or hindrance from any one, and prayed to rely his Written Statement listed Documents i.e., 1) The Original Sale Deed dated 05.04.1940, 2) The Original Patta dated 28.05.1993 vide Patta No.102 stands in the 1st petitioner's father Govindaraj, 3) The Original Patta stands in the 1st petitioner name along with his father.

1.3 On the Southern side of the 1st petitioner's property is bounded by the S.No.454/31, and S.No.454/65. As per the 'A' register of Kangeyanallore Village, the S.No.454/31 is mentioned as Poramboke (Vacant Plot), and the S.No.454/65 is mentioned as Poramboke (Street), and prayed to rely his Written Statement mentioned documents i.e., The Natham Adangal and FMB Plan. To the Southern side of the 1st petitioner property in S.No.454/40, the Land in S.No.454/65 (Poramboke – Street) and the S.No.454/31 (Poramboke) are situated. Now the respondents have amended the S.No. of 'F' Schedule property by giving the New S.No. as 454/31. The S.No.454/31 is Poramboke Land, and the petitioners are not the owners of the same as pleaded by the respondents in Para No.14 of the Plaint. By admitting the entire averments pleaded by the petitioners in the Written Statement, and the respondents have amended the Plaint.

1.4 As per the amended plaint, the petitioners are not the Owners of the Suit 'F' Schedule property namely S.No.454/31 as it is a Poramboke Land, and thus, the above Suit filed by the respondents for the relief of Easementary Right in respect of Suit 'F' Schedule property and other consequential reliefs are not maintainable as against the petitioners. Hence, the petitioners filing this petition to reject the Plaint as the same does not disclose a cause of action against them to maintain the above Suit, and prayed to allow the petition.

2. **Brief averments of the counter filed by the 3rd respondent is as follows:-**
(Adopted by the Respondents-1, 2, 4 to 6)

2.1 The petition filed by the petitioners is not sustainable either in law or on facts of the case, and the respondents denied all the allegations made in the petition and puts the petitioners to strict proof of the same, and states that their property has to be ascertained whether the same is as per the Title Deeds or had obtained Patta with excessive property more than the Title Deed and blocked the portion of the Common Way mentioned in the 'F' Schedule only after the inspection of the Commissioner, and filing his report. If the petitioners' property is in the Common Way, then the prayer for Easement of necessity is maintainable.

2.2 The Respondents are illiterate and they do not possess proper knowledge to maintain records, and thus, at the time of filing the Complaint, they were not able to support with entire documents in preparing the Complaint, and they are ready to amend the complaint if there is any defect in the complaint. Further, the respondents state that the petitioners' affidavit itself is a mis-conception of Truth, and lacks bonafide, and devoid of merits, and the same is liable to be dismissed with costs of them.

3. Neither the petitioners nor the respondents have placed any oral or documentary evidence before this Court.

4. **Point for Consideration:-**

a) Whether this petition is entitled to be allowed or not?

5. **Answering to the Point:-**

Both sides has been Heard. Records perused. Upon careful perusal of this case records including the petition along with the documents relied, the counter and considered the written argument filed by the petitioners & the respondents oral arguments, it is found that originally the Suit has been filed by the plaintiffs (the respondents herein) for declaration of Easmentary Right of Necessity in the 'F' Schedule property in favour them for the ingress and egress to Chinna Street from the respective houses of them, and for Permanent Injunction against the defendants (the petitioners herein), their members, men, agents, servants, persons acting through them etc., restraining them from interfering with the easementary right of ingress and egress of the plaintiffs to Chinna Street from the respective house of them, and for Permanent Injunction against the defendants restraining them from putting up any further construction in the 'F' Schedule obstructing the Easementary Right of ingress and egress and also for Mandatory Injunction against the defendants to remove the Superstructures put up in the 'F' Schedule property which is the Common Lane being enjoyed by the plaintiffs for time immemorial, and for costs.

5.1 The petitioners state that the Plaintiffs deliberately have not given the New S.Nos. Of the Suit 'A' Schedule to 'F' Schedule at the tile of filing of the Plaint, and they have given the Old S.No.155/2, and there is no such S.No. of Kangeyanallore Village, and they are the Owner of the S.No.454/40 (Old S.No.155/2) of the said Village, and

they are in possession and enjoyment of the same till date, and relied the Written Statement Documents i.e., the Original Sale Deed dated 05.04.1940 of their Grand Father, and Pattas of their Father, and also a Patta of 1st petitioner and his father, and Natham adangal & FMB which were already marked as Ex.R-1, Ex.R-3 to Ex.R-7 in this Case in I.A.No.47/2019 on the petitioners' side. As per the Amended plaint, the S.No. of the Suit 'F' Schedule property by giving the New S.No.454/31 is Poramboke Land, and the petitioners are not owner of the same as pleaded by the respondents/plaintiffs in Para No.14 of the Plaint, and thereby, the relief of Easementary Right in respect of Suit 'F' Schedule property and other consequential relief are not maintainable against them as there is no cause of action to maintain the above Suit, and the plaint has to be rejected.

6. On the other hand, the respondents/plaintiffs have stated that petitioners' property has to be ascertained whether the same is as per the Title Deeds or had obtained Patta with excessive property more than the Title Deed and blocked the portion of the Common Way mentioned in the 'F' Schedule only after the inspection of the Commissioner and filing his report, and if the petitioners' property is in the Common way, then the prayer for Easement of necessity is maintainable.

7. Admittedly, the suit is filed by the plaintiffs for declaration of Easementary Right of necessity of them and for consequential relief of Permanent Injunction not to interfere with the Easementary Right of ingress and egress of the plaintiffs to Chinna

Street from the houses of them, and for Permanent Injunction not to put up any further construction in the 'F' Schedule property, and for Mandatory Injunction to remove the superstructures put up in the 'F' Schedule property which is the common lane being enjoyed by the plaintiffs for time immemorial.

8. It is seen from records, after entering appearance in the Suit, on 09.04.2019, the defendants had filed Written Statement, and the Ad-interim Injunction was passed in I.A.No.47/2019 as against them, and then this Court has framed issues on 19.06.2019, and assailing over the said I.A.No.47/2019, the defendants have preferred C.M.A before the Hon'ble Principal Subordinate Court at Vellore in C.M.A.No.1/2020, and the same was disposed on 04.03.2021 with direction to obtain the report of the Advocate Commissioner as promptly as possible within a fortnight, and conclude the trial on merits within 2 months from the date of the said report.

9. In this case, an Advocate Commissioner has been appointed vide in I.A.No.46/2019 and he has inspected the property and filed interim report before this Court on 23.03.2021 stating that the Warrant mentioned S.No.155/2 was Sub-divided as S.No.454/1 to 454/100. Thereby, the Plaintiffs have come forward with petition to amend the plaint Schedule mentioned S.Nos' alone, and the same was allowed and Amended plaint was filed by the plaintiffs on 15.07.2022. After filing of Amend the plaint, the defendants/petitioners herein have filed the present petition to reject the plaint as on the ground of non disclosure of cause of action.

10. The essential criteria for the rejection of plaint under order 7 rule 11 of Code of Civil Procedure is that for rejection of plaint only plaint documents and the averments taken into consideration. Based upon the plaint averments only, the petition can be looked into.

1. On considering the entire averments in the Amended plaint, this Court noted that the plaintiffs have averred in Para-13 that 'they are have been enjoying the 'A' to 'E' Schedule mentioned properties respectively and residing in the same for several decades together and enjoying the 'F' Schedule property as the only way to reach the Chinna Street from their respective houses, and they have paid property tax and water tax for their properties, and to prove the same, they filed the list of Documents No.10 to 21 along with the plaint which reflects the name of the plaintiffs and their address as same mentioned in the Plaint and further, the said receipts does not contained the S.Nos. of the Plaint Schedule.

2. Further the plaintiffs averred in Para-14 of the plaint that the defendants who are the adjacent owners of the property a Vacant site in the said lane detailed in 'F' Schedule started construction of a building by encroaching about 1½ feet in the said 3 feet land and high handedly had put up concrete pillars in the said lane by encroaching the said lane, and the plaintiffs had prevented the defendants from putting up any construction, since the same is the only way for ingress to egress to reach the Chinna Street from their respective houses, and all the drainage pipes

and water pipes of the properties in Schedule A to E are passing through the said lane detailed in 'F' Schedule and if the defendants are allowed to construct the building by encroaching the land the plaintiffs will not be able to use the land in 'F' Schedule for their ingress and egress to reach the Chinna Street from their respective houses, and there is no other way to reach the Chinna Street from their houses, and to prove the same, the plaintiffs have filed the photographs along with the Plaint and shown them as List of Documents No.21 & 23.

3. Furthermore, the plaintiffs have averred in Para-15 of the plaint that the defendants have no manner of right to interfere with the possession and common enjoyment of the properties of the plaintiffs as lane in any manner, and hence, the plaintiffs have no other option except to approach this Court to safe guard their Civil Rights and the right of possession of properties and common enjoyment of the lane filed the above Suit for declaration of Easementary Right of necessity and for consequential relief of Permanent Injunction not to interfere with the Eastmentary Right of ingress and egress of the Plaintiffs to Chinna Street from their respective houses of them, and for Permanent Injunction not to put up any further construction in the 'F' Schedule property and for Mandatory Injunction to remove the Superstructures put up in the 'F' Schedule property which is the common lane being enjoyed by the plaintiffs for ingress and egress for time immemorial.

11. From the above discussions, this Court has observed that the House Tax & Water Tax receipts shows that the plaintiffs are paying statutory levying fees to authority which primarily reflects that they are in possession and enjoyment of the Suit 'A' to 'E' Schedule properties. In the Suit, the Plaintiffs have disputed that the defendants who are the adjacent owners of the property a Vacant Site in the Lane detailed in 'F' Schedule started construction of a building by encroaching about 1½ feet in the said 3 feet Lane, and had put up concrete pillars in the said Lane by damaging the drainage and drinking water pipe line by encroaching the said Lane, and if the defendants are allowed to construct the building by encroaching the lane, the plaintiffs will not be able to use the Lane in 'F' Schedule for their ingress and egress to reach Chinna Street from their respective houses, and there is no other way to reach the Chinna Street from their houses, and therefore they have approached this Court to safe guard their Civil Rights and right of possession & enjoyment of the 'F' Schedule, by way of filing the present Suit.

12. In the above context, this Court is of the view that there is some basis for the pleading for setting of a case for Easementary Right of necessity and for consequential reliefs as prayed in the Plaint from the materials available with the plaint only. So that, this Court upon careful perusal of the entire materials documents come to conclusion, there is a prima facie case made out and there are cause of action for filing the Plaint, and the same is not affected by the Amendment of Plaint also, and therefore,

this Court is not inclined to reject the plaint on the ground of non disclosure of cause of action. Accordingly, the point is answered.

13. **Result:-**

From the above discussions, in the interest of justice, this petition is dismissed. No costs.

-//Dictated by me to the Steno-typist, who directly typed the same and corrected and pronounced by me in the Open Court, on this the 19th day of March – 2024.//-

(Sd/-).. K.Venkatesan
DISTRICT MUNSIF
KATPADI

Both side documents and witnesses: Nil

(Sd/-).. K.Venkatesan
DISTRICT MUNSIF
KATPADI