

IN THE COURT OF THE MUNSIFF, KAYAMKULAM

Present: Smt.Aneesa.A, Munsiff

Friday, the 24th day of May, 2024/3rd Jaishtha, 1946.

IA.1/2023 in ORIGINAL SUIT.447/2023

(Filed on 22.12.2023)

Petitioner/Plaintiff:

Sudharma.N,
W/o.Asokan,
Swandanam veettil
Pazhampadysseril,
Chirakkadavom muri,
Kayamkulam Village.

(By Advs.A,Shajahan,
G.Saji & Kamal.S)

**Respondents/
Defendants:**

1. Dr,Kavitha Dev,
W/o Jayakumar,
Plot No-31,Ramnagar,
S.S. Puram, Avadi Main Road,
Avadi, Chennai District,
Tamil Nadu. 600077.
2. Jayakumar, S/o.Kumaran,
Plot No-31,Ramnagar,
S.S. Puram, Avadi Main Road,
Avadi, Chennai District,
Tamil Nadu. 600077.

(By Advs.N.Raphy Raj &
Athiraraj.A)

This petition is filed Under Order 39 and Rule 1 and 2 and the Civil Procedure Code 1908 and coming on for final hearing on 24.05.2024 and the court on the same day passed the following.

ORDER

This is an order in a petition filed by the petitioner/ plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 for temporary injunction.

2. The gist of averments in the petition are as follows:-
Petitioner is the plaintiff in the suit. The 1st defendant is the daughter of the plaintiff in her first marriage and the 2nd defendant is the husband of the 1st defendant. The first husband of the plaintiff Sri. Sahadevan died intestate and his properties devolved upon the plaintiff, his mother Smt. Kalyani and to 1st defendant as his legal heirs. With respect to the properties of deceased Sahadevan, the plaintiff and the mother of Sahadevan executed a partition deed No. 2742/92 of Nooranad Sub Registrar's Office. The plaintiff in her personal capacity and in representative capacity of the 1st defendant executed the partition deed. The plaint schedule property is allotted to the 1st defendant as her share. There is a recital in the partition deed that the plaint schedule properties, that is the item No. 2 property in the partition deed, will be in possession of the plaintiff during her life

time and she has the right to collect yield from that property and the right to reside in the building situated therein. Thus, the plaintiff is holding possession of the said property and the building. The properties received by the 1st defendant absolutely in her favour were already sold by her. At the time of marriage between the defendants and thereafter, the properties, money and gold ornaments were given to the 1st defendant by the plaintiff. Those moneys were spent extravagantly by the 2nd defendant for the purpose of his business at Chennai and it were lost. Even after two children were born to 1st defendant, she demanded more money from the plaintiff, but the plaintiff reluctant to give money to her. Thus, she demanded for relinquishing the right of the plaintiff over the plaint schedule properties, but, since the tomb, where the father of the 1st defendant was buried, is in the plaint schedule property and the plaintiff wants to preserve the plaint schedule property of the 1st defendant for the petitioner's life time and because the income taken from the property will be a help to her, she is not ready to relinquish the right over the plaint schedule properties. Hence the defendants were now in inimical terms with the plaintiff. While so, in order to declare the clause in

partition deed stating that the right to collect usufructs and the right to reside in the building as void, the 1st defendant as plaintiff filed O.S.No. 187/2019 before the Munsiff's Court Mavelikara. While existing that suit, the 1st defendant told the plaintiff that due to financial stringency and out of sudden emotion, she filed the said suit and also informed that she is not interested to continue with the suit. By believing the words of the 1st defendant, for meeting the financial difficulties of the 1st defendant, the plaintiff executed a settlement deed dated 26.05.2023 in favour of the 1st defendant by handing over the right of the plaintiff over the property having an extent of 24.76 ares and having a value of more than two crores to the 1st defendant. Thereafter, as the 1st defendant told the plaintiff that the case has been withdrawn by her, the plaintiff did not conduct the said case and therefore, on 26.05.2023, the said suit was decreed ex parte in favour of the 1st defendant. Thereafter, the plaintiff filed R.P.No. 36/2023 before the Munsiff's Court, Mavelikara to set aside the ex parte decree and the same is pending. While so, it is reliably learnt on 21.12.2023 that, as per the mandatory injunction in O.S.No. 187/2019, without taking any legal proceedings to evict the plaintiff from the plaint

schedule property, the defendants and men conspired together for selling the plaint schedule property to strangers and to demolish the building and tomb in the plaint schedule property and to remove the furniture and household items from the plaint schedule property. The defendants have no right to do so. Therefore, it is highly necessary for the petitioner to obtain an order to restrain the respondents/defendants from committing any illegal acts in the plaint schedule property. The petitioner has a prima facie case and balance of convenience is in favour of the petitioner. Therefore, it is highly necessary to pass an order of temporary injunction to restrain the respondents from forcefully evicting the petitioner from the plaint schedule property, from demolishing the building, tomb and other constructions in the plaint schedule property and from taking any movable or immovable properties from the plaint schedule property till the disposal of the suit. Thus, this petition.

3. The respondent/ 1st defendant appeared and filed objection contending *inter alia* as follows:- The respondent is the 1st defendant in the case. The 2nd defendant is her husband. All the allegations in the plaint as well as the injunction application are false, frivolous,

incorrect, misleading and hence denied. The injunction application and suit are laid by suppressing material facts. The injunction application and the suit are sheer abuse of the process of court. The suit is liable to be rejected under Order VII Rule 11 C.P.C for the reason that there is a concluded decree and judgment with respect to subject-matter in the suit in favour of respondents. It is apposite to note that the 1st defendant filed a suit for declaration declaring the clause in the partition deed No. 2242/1992 of Nooranad Sub Registrar's Office enabling the plaintiff to collect usufructs from the plaint schedule property, as null and void, mandatory injunction to surrender the vacant possession of the plaint schedule property and permanent prohibitory injunction restraining the plaintiff from entering into the plaint schedule property. After conducting exhaustive trial and appreciation of law and facts in its proper perspective, the Munsiff's Court Mavelikara decreed the suit as prayed for. So, the said judgment produced from the side of the defendants become the part of pleadings as contemplated under Order VI Rule 1 of the C.P.C. On a meticulous scanning of documents and pleadings, it is clear that the suit is hit by res judicata and constructive res judicata. Here, in this case, the res

judicata become a pure question of law based on admitted facts. So, the plaint is liable to be rejected under Order VII Rule 11 of the C.P.C. It is pertinent to note that after obtaining the decree and judgment in favour of the 1st defendant in O.S.No. 187/2019 filed before Munsiff's Court, Mavelikara, the 1st defendant executed a deed with respect to the said property in favour of her husband/ the 2nd defendant. So, if the petitioner wants to claim any right over the said property, she needs to seek declaration of her right with respect to said property or rather a simple injunction suit will not lie. The suit as framed is not maintainable. The injunction application and the suit are tainted and vitiated by systematic fraud and malice perpetrated by the petitioner. It is true that the respondent is the one and only child born in the petitioner's first wedlock between Late Sahadevan. While so, Sri. Sahadevan passed away for his heavenly abode on 20.10.1990. After his demise, all his properties devolved upon his wife (petitioner), daughter (1st defendant) and his mother as per Hindu Succession Act. After the demise of Sri. Sahadevan, the petitioner herein with a dubious intention and with a view to grab interest of the 1st defendant or right in the property fraudulently and dubiously executed a partition deed

No. 2742/1992 at Sub Registrar's Office Nooranad. At the time of execution of the said partition deed, the 1st defendant was a minor and she was represented by the petitioner. It is further submitted that the petitioner was represented by and executed the said partition deed with dubious intention. It is pertinent to note that as per partition deed No. 2742/1992 registered at Sub Registrar's Office Nooranad, item No. 2 schedule property was given to the 1st respondent. But, the petitioner incorporated a specific recital in the partition deed that item No. 2 property will be in the possession of the petitioner during her life time and she will have the right to collect yield from the said property. The execution of recitals in the partition deed with dubious intention to restrict my right is illegal and the same will not stand the test of law. The said recital was incorporated in the aforesaid partition deed at a time when the 1st defendant was having legal disability. In such circumstance, claiming possession of said property on the basis of said illegal and void clause has no effect or rather the possession of the plaintiff on the basis of said clause is illegal. The allegation of the petitioner that at the time of the marriage of 1st defendant, plethora of money and ornaments were gifted in connection with the same is

incorrect and misleading. No such support was exerted by the petitioner after her second marriage or rather she was not interest in looking after affairs of the 1st defendant. In such circumstances, the contention of the petitioner that she exerted her helping hand with financial assistance at the time and after the marriage has no legs to stand. The respondent or her husband asked any money from the petitioner at any point of time. The contention of the petitioner regarding O.S.No. 187/2019 filed before Munsiff's Court Mavelikara for declaration of recitals in partition deed No. 2742/1992 of Sub Registrar's Office Nooranad is not binding, mandatory injunction and permanent prohibitory injunction is correct. The further contention of the petitioner that the said suit is filed by the respondent because of the financial crunch and further assured that the suit will not proceed further is incorrect. Subsequently, on the basis of the assurance given by the respondent for withdrawing the suit, the defendant/ petitioner in O.S.NO. 187/2019 of Munsiff's Court Mavelikara is incorrect and misleading. The respondent never given any such assurance for withdrawing the suit. The petitioner become ex parte in the proceedings only because of the negligence or laches of the petitioner.

It is true that the petitioner filed an application to set aside the ex parte order in O.S.No. 187/2019 on the file of the Munsiff's Court Mavelikara. But, the contentions mounted from the side of the petitioner in the said application is not maintainable either under law or facts. The respondent already filed detailed objection mounting the maintainability of the said application. The further contention of the petitioner that the defendants are trying to alienate the scheduled property to third party is incorrect and misleading. Further contention that the valuable property of the petitioner is trying to remove from the schedule property is incorrect. After obtaining decree and judgment in O.S.No. 187/2019 of Munsiff's Court Mavelikara, the respondent become absolute owner-in -possession of the schedule property and no person has no manner or right or authority over the said property. After obtaining the decree and judgment, the 1st respondent executed a deed in favour of the 2nd respondent herein and now the 2nd respondent is the absolute owner-in-possession of the property. Hence this suit is not maintainable. The plaintiff had purposefully suppressed the true state of affairs getting undue advantage from this court. There is no prima facie case in favour of the

petitioner, balance of convenience is also in favour of the respondent.

Thus, this petition is to be dismissed.

4. The following points were formulated for consideration:-

1. Is there a prima facie case in favour of the petitioner ?
2. Is the balance of convenience in favour of the petitioner ?
3. Is the petitioner would suffer irreparable injury and loss, if order of injunction is refused ?
4. What is the order as to Reliefs and costs?

5. The learned counsel for the respondent filed argument note.

Heard both sides.

6. **Point Nos. 1 to 3:-** These points can be considered together. Here, the petitioner sought injunction restraining the respondents from forcefully evicting the petitioner from the plaint schedule property, from demolishing the building, tomb and other constructions in the plaint schedule property and from taking any movable or immovable properties from the plaint schedule property till the disposal of the suit. Along with this I.A, the petitioner had

produced the copy of judgment of Munsiff's Court Mavelikara in O.S.No. 187/2019, in which the subject-matter of this suit and parties are one and the same. The petitioner admitted that there is a judgment and decree in respect of the subject-matter of this suit against the petitioner. O.S.No. 187/2019 is decreed as follows:- It is declared that the clause in partition deed No. 2247/1992 of Nooranad Sub Registrar's Office, which provides for right to defendant (plaintiff in this case) to collect usufructs and to reside in the suit properties is not binding on the plaintiff, defendant is directed by a mandatory injunction to vacate the plaint schedule properties and to handover their possession to the plaintiff within one month from the date of judgment, the defendant is restrained by a decree of permanent prohibitory injunction from committing any mischief in the plaint schedule property and from encumbering the said properties." The learned counsel for the respondent contended that on going through the aforesaid order, there was a specific direction to surrender the vacant possession within a period of one month from the date of judgment and the plaintiff herself admitting that she has not complied the said decree and judgment of the Munsiff's Court, Mavelikara. He

pointed out that the conduct of the party seeking the equitable relief must be fair and equitable and should not be dishonest. He contended that here the petitioner want an order from this court to protect her illegal possession to violate the order of Munsiff's Court Mavelikara. Applying the principle of one who seek equity must do equity, the plaintiff is not entitled to any relief from this court.

7. On going through the plaint itself, it is clear that the petitioner is not at all obeyed the order of the Munsiff's Court Mavelikara and now she wants an interim injunction order from this court. The learned counsel for the respondent relied on the decision in **Prestige Lights Ltd. v. State Bank of India reported in [2007 KHC 3936]**, it was held that *“An order passed by a competent court if interim or final has to be obeyed without any reservation. If such order is disobeyed or not complied with, the court may refuse the party violating such order to hear him on merits.”*

8. On going through s. 41 (h) of Specific Relief Act, *“An injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust.”* Here, the petitioner has not complied the judgment

and decree of Munsiff's Court Mavelikara. If she has any grievance against the order of Munsiff's Court Mavelikara or not willing to surrender the possession, she could have availed the remedy contemplated under the provisions of C.P.C such as appeal under s. 96, review under Order 47 C.P.C etc. By filing an appeal, she can also file an injunction application under Order XXXIX Rule 1 and 2 of the C.P.C. Here, in this case, the plaintiff has approached this court without availing the equally efficacious remedy. In these circumstances, the principle of one who seek equity must do equity is to be looked into. The principle also having some overlapping effect of clean hand doctrine. The object underlines the principle that every court is not only entitled but duty bound to protect itself from unwanted litigations. Here, the plaintiff without complying the order of Munsiff's Court, Mavelikara and without availing equally efficacious remedy approached this court for an injunction. In these circumstances, this court reached at a conclusion that the petitioner has not a prima facie case and balance of convenience is also not in her favour. Therefore, the petitioner is not entitled for such a remedy. Hence she is not entitled to a temporary injunction as sought for. Thus,

these points are answered accordingly.

9. **Point No. 4** :- In view of my discussions and findings on point Nos. 1 to 3, I.A.No. 1/2023 is liable to be dismissed.

In the result, I.A.No. 1/2023 is dismissed. Considering the relationship between the parties, there is no order as to costs.

(Dictated to the confidential assistant, transcribed and typed by her, corrected and pronounced by me in open court on 24th day of May, 2024.)

Sd/-
ANEESA.A
MUNSIFF

APPENDIX:
Nil.

Sd/- MUNSIFF

// True Copy //

MUNSIFF

Typed by: Shafeek
Compd by:

Order in IA.1/23 in OS.447/23
Dated.24/05/2024