

**IN THE COURT OF ADDITIONAL DISTRICT MUNSIF COURT,
POLLACHI.**

**PRESENT: Thiru. M.S.Sreenath B.A., B.L.,(Hons) L.L.M.,
Additional District Munsif, Pollachi**

Monday 30th day of June 2025

IA. No.3/2025

in

O.S. No.30/2025

Balachandran

.... Petitioner/ Plaintiff

-Vs-

Jagadish

.... Respondent/Defendant

This Petition came up for final hearing before me in the presence of Thiru K.Sethupathi, learned Counsel for the Petitioner and in the presence of the Thiru K.P.Shanmugam, as learned counsel for the respondent. Upon hearing the arguments of the both sides and upon perusing the materials on record and having stood over for consideration till this day, this court passes the following:

ORDER

This petition is filed under Order 39 Rule 1 and 2 of CPC seeking temporary injunction restraining the respondent and his men from disturbing the petitioner's peaceful enjoyment of the petition property cart track from 1958 till the disposal of the suit.

2. GIST OF THE PETITION

(2.1) The petition properties belonged to the petitioner's father Kandhasamy Chettiar by way of registered sale deed dated 28.10.1958 on the file of Sub Registrar, Anaimalai in document no.829/1958 and were in his possession since then. Subsequently, a settlement deed on the file of Sub Registrar, Anaimalai in document

no.522/1959 was executed by petitioner's father Kandhasamy Chettiar in favour of the then minors petitioner and her brother Sathasivam with their mother Valliammal as guardian. Subsequently upon attaining majority, petitioner and her brother Sathasivam mutated the patta to their name and were in joint possession. Upon death of said Sathasivam on 24.05.2017, the petitioner and legal heirs of deceased Sathasivam entered into a partition deed dated 15.07.2020 registered on the file of Sub Registrar, Anaimalai in document no.2263/2020 and in which A schedule properties were allotted to the petitioner.

(2.2) In 1969, the respondent's father Thangavel bought from Arumugam Chettiar, the remaining portion of the property left after the sale deed ExP1, by sale deed on the file of Sub Registrar, Anaimalai in document no.1155/1969. On account of the death of Thangavel on 21.11.2014 and by the release deed dated 02.12.2021 on the file of Sub Registrar, Anaimalai in document no.5365/2021 executed by the other legal heirs, the respondent was entitled to his aforesaid property.

(2.3) The petitioner was enjoying the petition properties as per the aforesaid documents from 1958 without any disturbances. On 10.01.2025, the respondent attempted to place a steel gate on the beginning of the petition cart track near the public road. The petition cart track is as per the document 829/1958 which runs from the public road on the western side of the respondent property with a breadth of 12 feet for about 89 meters to north and then turns east with the same breadth runs almost 15.5 meters and then turns north with the same breadth runs almost 16.5 meters and reaches the property of the petitioner. The attempt of the respondent was stopped by the petitioner.

(2.4) The right of cart track has been mentioned in sale deed Ex.P1 as "எனது பு.ஏ.1.73 விஸ்தீரணமுள்ள பூமியின் மேல்கோட்டில் தென்வடலாக இட்டேரியிலிருந்து ஹை 4.00 ஏ.விஸ்தீரணமுள்ள பூமிக்கு உங்கள் வண்டி, கால்நடை, ஆள், வகையறா நடந்து கொள்ள வேண்டியது" and also mentioned in sale deed Ex.P4 as "எனது

பூமியில் மேல்கோட்டில் தென்வடலாக கந்தசாமிசெட்டியார் பூமிக்கு போகவர வண்டி ஆட்கள் நடந்துகொள்ள தடம் விட்டுவிட வேண்டியது" and also as "வெங்கடாசல் செட்டியார் மகன் ஆறுமுகம் செட்டியார் வெங்கடாசல ஈஸ்வரர் கோவில் ஒன்றை கட்டியிருப்பதால் ஷையார் ஜீவதிசை வரை ஷை கோவிலுக்கு போய் வர விட்டுவிட வேண்டியது " However, the respondent has been denying the petitioners right of enjoyment and right by documents and creating disturbances. The respondent has purposefully suppressed the cart track in the release deed. The respondents trying to unlawfully encroached the petition cart track and hence, the petitioner has approached this court for temporary injunction and the same is not granted, the petitioner will be put irreparable loss. The petitioner prays the petition may be allowed.

3. GIST OF COUNTER

(3.1) The petition filed by the petitioners is false, frivolous, vexatious, and wholly unsustainable in law and on facts. Save and except those averments which are specifically admitted herein, all other allegations contained in the petition are denied and the petitioners are put to strict proof thereof. The respondent admitted para 4 to para 8 of the petitioners' affidavit which relates to the title deeds and parent documents of the petitioner and respondent. The partition deed dated 15.07.2020 is a self serving document and its recitals will not bind the respondent.

(3.2) In the sale deed Ex.P1 the right of cart track is mentioned as "எனது பு.ஏ.1.73 விஸ்தீரணமுள்ள பூமியின் மேல்கோட்டில் தென்வடலாக இட்டேரியிலிருந்து ஷை 4.00 ஏ.விஸ்தீரணமுள்ள பூமிக்கு உங்கள் வண்டி, கால்நடை,ஆள், வகையறா நடந்து கொள்ள வேண்டியது" This right is only given to the petitioner's father as per the above sale deed. More than this, neither Kandasamy Chettiar nor his legal heirs nor subsequent title holders of that property cannot claim more right in the respondent property. The said cart track right has been extinguished due to non-

existence for very long period viz. from the period of Kandasamy Chettiar. In the partition deed, Ex.P3 the petitioner and his brother are creating a new right in the respondent property by including word வாகனங்கள். The word வண்டி means bullock cart while வாகனங்கள் means mechanized vehicles like tempo and lorry. By including new rights in the subsequent documents the petitioner is making unlawful claim in the respondent property in sale deed Ex.P1, it is mentioned that the cart track runs not south direction on the western end of the respondent property. The right in the cart track presently clean absolutely belongs to the respondent and it is the separate cart track of the respondent. No cart track was ever in existence at any point of time as given in sale deed Ex.P1.

(3.3) The petitioner and his predecessors in title were using only the PAP cart track and ஓடைபுறம்போக்கு situated on the northern side of the petitioner property to reach the petitioner property. Only recently the respondent levelled his property due to effective cultivation and only at this time the respondent form the cart track on the western side in his property and it runs toward north to a distance and turns towards east and reaches the temple situated on the north east corner of the respondent property. The respondent has put up fence between the two properties. Since the petitioner is the uncle of the respondent and on his request, the respondent few years back permitted the petitioner to use respondents separate cart track to reach the petition property and for that purpose removed a portion of the fence and laid a gate.

(3.4) Misunderstandings arose between the parties and the respondent revoked his permission and completely fence the northern side of the property. The present cart track is not the cart track mentioned in sale deed Ex.P1. The south west portion of the petitioner property is filled with huge pile of stones and its physical features will clearly show that there had never been a cart track.

(3.5) The petitioner at the time of filing the suit as forcefully destroyed the fence and the gate and police complaint has been lodged against him. The right of

cart track was given only to Arumuga Chettiyar till his lifetime in sale deed Ex.P4 and subsequent title holders cannot playing this right. This petition has been filed stating false facts. There is no cause of action or merits to the suit. The petitioner has not come forward to this court with clean hands. The prima facie case and balance of convenience is not in favour of the petitioner and hence the petition may be dismissed.

4. DISCUSSION

(4.1) Heard both sides. Records perused. Rival submissions considered. On perusal of sale deed Ex.P1, it can be seen that petition cart track has been mentioned as “எனது பு.ஏ.1.73 விஸ்தீரணமுள்ள பூமியின் மேல்கோட்டில் தென்வடலாக இட்டேரியிலிருந்து ஷை 4.00 ஏ.விஸ்தீரணமுள்ள பூமிக்கு உங்கள் வண்டி, கால்நடை, ஆள், வகையறா நடந்து கொள்ள வேண்டியது”. Further in sale deed Ex.P4 by which respondent father bought the property, also mentioned the petition cart track as follows: “ எனது பூமியில் மேல்கோட்டில் தென்வடலாக கந்தசாமிசெட்டியார் பூமிக்கு போகவர வண்டி ஆட்கள் நடந்துகொள்ள தடம் விட்டுவிட வேண்டியது” This clearly mentions the name of the father of the petitioner. The sale deed Ex.P4 was executed nearly 11 years after sale deed Ex.P1 and yet similar recitals as to petition cart track are found on both sale deeds. The respondent has simply denied that the petition cart track was never in existence. When the petition cart track has been mentioned in both of the aforesaid sale deeds, the prima facie case stands in favour of the petition cart track and therefore in favour of the petitioner.

(4.2) The respondent has claimed that the petitioner has tried to create new claims by including the word வாகனங்கள் in the partition deed Ex.P3. The question whether the words வண்டி and வாகனங்கள் refer to different meanings are to be decided at the end of the full fledged trial. As per the sale deed Ex.P1 and Ex.P4, the right cart track in the petition cart track has been recognised and if temporary

injunction is not granted, the petitioner will not be able to enjoy his rights in the petition property as an owner. On the other hand, the respondent has admittedly stated that there is a cart track in the respondent property and it was in use by the petitioner on permission. The respondent has claimed that said cart track and petition cart track are not one and the same. The same is to be decided in trial. Since, admitted the cart track which was in use by the petitioner, the grant of temporary injunction would not cause serious inconvenience to the respondent compared to that will be caused to the petitioner if the same is not granted. Hence, this court is satisfied that the balance of convenience is in favour of the petitioner and if temporary injunction is not granted, the petitioner would be put to irreparable loss.

(4.3) It is trite law that in order to be entitled to temporary injunction, one must prove that prima facie case and balance of convenience are in his favour and if the same is not granted he would be put to irreparable loss. The petitioner in a present case has fulfilled all the three requirements and hence entitled for the temporary injunction as prayed for. Hence, this court is inclined to allow this petition.

IN THE RESULT, this petition is ALLOWED by granting temporary injunction restraining the respondent and his men from disturbing the petitioner's peaceful enjoyment of the petition property cart track from 1958 till the disposal of the suit. The parties shall bear their own costs.

Dictated by me, typed by steno typist on my computer and corrected by me and pronounced by me in open court on this 30th day of June, 2025.

Sd.....(M.S.SREENATH)

ADDITIONAL DISTRICT MUNSIF
POLLACHI

Petitioner side witnesses - NIL

Petitioner side documents:

Doc No.	Date	Name of the Documents	Nature of document
Ex.P1	28.10.1958	Sale deed stands in the name of Kandhasamy Chettiyar	Certified copy
Ex.P2	24.05.1959	Settlement deed stands in the the name of Sadhasivam and his brother	Certified copy
Ex.P3	15.07.2020	Partition deed	Certified copy
Ex.P4	13.10.1969	Sale deed stands in the name of Thangavel	Certified copy
Ex.P5	02.12.2021	Release deed	Certified copy
Ex.P6	-	CD	Original
Ex.P7	-	GPS Map camera photo	

Respondent's side witnesses and documents: Nil

Sd.....(M.S.SREENATH)
 ADDITIONAL DISTRICT MUNSIF
 POLLACHI

