IN THE COURT OF THE DISTRICT MUNSIF, SULUR.

Present : **Tmt.N.Renuga,** B.A., B.L.,

District Munsif, Sulur

Tuesday, the 30th day of April 2024

I.A.No.2/2021

in

O.S.No.14/2021

Maheshwari
W/o.Anandharaj ...Petitioner/ Plaintiff

/ Vs /

1. P.Thangaraj
2. P.Mandharachalam
3. M.Eswaran
4. P.Kangaraj
5. R.Thangavel (died)
6. Indrani
7. T.Dhanapal

(Amended as per order in IA.No.14/2023 dated 25.09.2023)

...Respondents / Defendants

This petition coming on 07.02.2024 for final hearing before me in the presence of Thiru.P.Sivakumar, Advocate for the Petitioner and of Thiru.P.K.Praburam, Advocate for the 1st Respondent and Thiru.N.Ranganathan, Advocate for the 6th and 7th respondent and the 5th respondent reported died and the 2nd to 4th respondents being called absent set exparte and upon hearing of both parties and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

ORDER

Petition filed by the petitioner under Order 39 rule 1 and 2 of CPC to grant an order of temporary injunction, restraining the respondents/defendants their relatives and their men from any way interfering with the petitioner peaceful possession and enjoyment of cart track mentioned in the schedule 'B' to the application till the disposal of suit and pending disposal of the application to grant ad-interim

injunction to the said effect.

14-2021

1. The brief averments of the affidavit filed by the Petitioner as follows:-

1.1. The petition mentioned 'A' schedule property is originally belonged to the petitioner's father namely R.Rangasamy son of Rasa gounder by 14-2021way of sale deed dated 23.01.2012 executed by V.Marimuthu son of Velusamy go14-2021under in his favour along with right to use the cart track mentioned in 'B' schedule to reach the lands in 'A' schedule and the said is registered as doc.No.1035/2012. The petitioner's father R.Rangasamy is absolute owner of 'A' schedule property as per sale deed and he had settled the property 'A' schedule property along with right to use the cart track mentioned in 'B' schedule to the petitioner's favour by the settlement deed bearing doc.No.15760/2020 dated 18.12.2020 and also handed over the possession and enjoyment of the schedule mentioned property to the petitioner.

1.2. The 'A' schedule property is an extent of 0.82-1/2 acres of land along with in S.F.No.234/2B and S.F.No.234/2A in Thalakkari village and the petitioner is in possession and enjoyment of the said property and she cultivating the said land. The petitioner have to start from Oor Natham, from Senjerimalai to Udumalpet Road, she pass through 12 feet width East West cart track which passes adjacent to the lands of 1st and 2nd defendants about 1500 feet length and turns and runs towards South through 12 feet North South cart track which passes adjacent to the lands of the 3rd to 5th defendants about 450 feet length and reaches petitioner lands situated in S.F.No.234/2B.

1.3. The petitioner entitled to above access as per the document and the said pathway also clearly described in the documents of the defendants also. The petitioner's predecessors was using the cart track from time immemorial. All the Revenue records are standing in petitioner name. The petitioner cultivating the coconut tree in the 'A' schedule property and to reach the said land for cultivating the

same, she taking four wheelers, such as lorries, vans and tractors and other vehicles through the suit cart track to reach his property.

1.4. All these days, the petitioner have been enjoying the 'B' schedule of property as cart track to reach the lands in 'A' schedule. On 27.12.2020, when the petitioner taking tractor through the 'B' schedule of property to reach 'A' schedule for her agricultural purposes, the defendants and their mens made the disturbance to the petitioner while she going through the cart track mentioned in 'B' schedule. The petitioner approached the Negamam Police station for his legal assistance and also to take steps against the defendants. The police officials are advised that the said dispute is in civil nature and they cannot interfere in the same. Hence, the petition.

2. The brief averments of written statement adopted as Counter by the 1st respondent as follows:

2.1. The petition is false, frivolous and unsustainable in law and on facts of the case. The suit contains two schedule of property, the 'A' schedule of the property situated at S.F.No.234/2B and S.F.No.234/2A belonged to the plaintiff it is not disputed, but in order to reach the S.F.No.234/2B and S.F.No.234/2A by the plaintiffs by using the 'B' schedule of the suit property ie, in S.F.No.233/4, S.F.No.233/5 and S.F.No.234/1B width of 12 feet is totally false and not such card track available in the said S.F.No.233/4, S.F.No.233/5 and S.F.No.234/1B of Thalakkarai village.

2.2. Part of the 'A' schedule of the suit property and other properties are ancestral property of one Periya Mandhiriyappa gounder and Chinna Mandhiriyappa gounder both are the sons of Veerappa gounder and they are joint together and executed a registered partition deed vide doc.No.1720/1977 SRO Palladam. In the said partition deed 'A' schedule of the suit property was allotted to the share of Chinna Mandhiriyappa gounder, in the said partition deed itself no such suit cart track was mentioned in order to reach the 'A' schedule of the suit property. And on 12.09.1977 this defendant father Palanisamy gounder and the said Periya

Mandhiriyappa gounder, his wife Ganapathiyammal, and one Ganapathy gounder and Rakathal are joint together and executed a exchange deed of their properties through vide doc.No.1825/1977 SRO Palladam. In the said exchange deed the 12 links cart track (around 8 feet) situated at Northern portion in S.F.No.233/4 Thalakkarai village was mentioned. The said cart track was commonly used by this defendant vahiras, Periya Mandhiriyappa gounder vahiras and Chinna Mandhiriyappa gounder vahiras.

2.3. The said Chinna Mandhiriyappa gounder had two sons namely Dhandapani and Mayilsamy gounder son namely Dhandapani's legal heirs ie., wife Loganayagi, daughters Nirmaladevi and Gomathi are joint together executed a sale deed over the 'A' schedule of the suit property in favour of one Velusamy gounder through registered sale deed vide doc.No.2579/2005 SRO Palladam. At the time of execution of the sale deed the cart track situated at Northern portion in S.F.No.233/4 which running towards West – East direction as width of 12 links (ie., around 8 feet) and North – South cart track situated at Periya Mandhiriyappa gounder land and purposely without having right in S.F.No.234/1 the said Velusamy gounder and his vendor include this defendants property and mentioned as cart track situated thereon.

2.4. The said Velusamy gounder filed a suit before District Munsif of Palladam in OS.No.251/2006 against this defendant and 6 others for declaration of 15 feet cart track described in the 'B' schedule of this suit property in order to reach 'A' schedule of this suit property and also permanent injunction. In the said suit the commissioner was appointed to note down the physical features of the property and for measurement of the cart track. At the outcome of the commissioner report 8 feet width cart track situated at Northern portion in S.F.No.233/4 which starting from Senjerimalai – Udumalai main road running towards West – East direction and no such cart track available in this defendant property at Eastern portion ie., S.F.No.233/4, S.F.No.233/5 and S.F.No.234/1B which running towards North – South direction. And after knowing the reality the said Velusamy gounder not pressed the suit, hence, the suit was dismissed on 12.12.2011. And during the time

of civil proceedings the Velusamy gounder also lodged a criminal complaint under section 200 Crpc against this defendant and 6 others before Judicial Magistrate of Palladam in CC.No.38/2008 and after withdrawing the civil suit in OS.No.251/2006, the criminal case in CC.No.38/2008 also not contested by the said Velusamy gounder. And thereafter the said Velusamy gounder used 12 links cart track situated at Northern portion of property situated in S.F.No.233/4 which running towards West – East direction which starts Senjerimalai – Udumalai main road and turn right (South) and used the North – South cart track situated at S.F.No.232/2A, S.F.No.232/2B and S.F.No.232/2D1, at any point of time no one used this defendant Eastern portion of property situated in S.F.No.233/4, S.F.No.233/5 and S.F.No.234/1B as North – South cart track.

2.5. While pendency of the suit in OS.No.251/2006 the said Velusamy gounder executed a registered gift settlement deed in favour of his son V.Marimuthu over the 'A' and 'B' schedule of the suit property through vide doc.No.15286/2010 SRO Palladam. In the said settlement deed the said Velusamy gounder mentioned the width of the West – East cart track as 15 feet instead of 12 links situated at Northern portion of S.F.No.233/4 and at the end turn right (South) and use the North – South cart track situated at Periya Mandhiriyappa gounder vahiras ie., in S.F.No.232/2A, S.F.No.232/2B and S.F.No.232/2D1 in order to reach the 'A' schedule of the suit property. The said Velusamy gounder's vendor had clearly recited in the sale deed the West – East cart track as 12 links, but the said Velusamy gounder mentioned the width of the suit cart track as 15 feet. It is well settled the law that any person who claims title to a property through a title deed in his favor, can only claim his right with respect to what his vendor can conveyed to him and not beyond that.

2.6. On 23.01.2012 the said Marimuthu executed a sale deed in favour of R.Rangasamy who is the father of the plaintiff over the suit properties through registered sale deed vide doc.No.1035/2012 SRO Palladam. In the said sale deed the vendor Marimuthu mentioned the West – East cart track situated at S.F.No.233/4

as 12 feet and turn right (South) and use the mammual cart track in order to reach the 'A' schedule of the suit property and thereafter on 18.12.2020 the said Rangasamy executed a gift settlement deed in favour of his daughter who is the plaintiff herein through vide doc.No.15760/2020 SRO Palladam. In the said settlement deed the vendor Rangasamy executed 12 feet width cart track towards West – East direction in S.F.No.233/4 and turn right (South) and use 12 feet width North – South cart track situated in S.F.No.233/4, S.F.no.233/5 and S.F.No.234/1B, which the property is absolutely belonged to this defendant. No such width of 12 feet North – South cart track situated at Eastern portion in S.F.No.233/4, S.F.No.233/5 and S.F.No.234/1B of Thalakkarai village.

2.7. The plaintiff has right to use the cart track starts from Udumalai – Senjerimalai Main road width of 12 links ie., (around 8 feet) alone which running towards West – East direction at Northern portion of this defendant property in S.F.No.233/4 and at the end of Eastern portion of S.F.No.233/4 the plaintiff has to reach her lands through the North – South cart track situated in Periya Mandhiriyappa gounder land. The plaintiff has no right to claim any 12 feet width of North – South cart track at S.F.No.233/4, S.F.No.233/5 and S.F.No.234/1B of Thalakkarai village, because no such 12 feet width of North – South cart track available in S.F.No.233/4, S.F.No.233/5 and S.F.No.234/1B of Thalakkarai village.

2.8. The plaintiff and her vendor very well know that there is no cart track mentioned in 'B' schedule of the suit property. The plaintiff in order to suit her necessity and for her convenience had suppressed about what was conveyed to them through their title deeds and had given an imaginary cart track as 15 and 12 feet and the plaintiff can reach her lands through an two alternative way which is more than 20 feet width situated on the South and Eastern side of the 'A' schedule of suit property and the plaintiff had suppressed the alternative way and claimed 12 feet width West – East and 12 feet width North – South cart track through this defendant land for which they have no right to do so. And at any point of time the plaintiff or her vendor or her predecessors had been enjoying cart track to a width of about 12

feet and more over the revenue records over the suit cart track is misleading one and the same was forged and fabricated by the plaintiff by producing void title deeds. And pertaining to the suit cart track the title deed stands in the name of plaintiff and her vendors are void and it will not give confer any right, title and interest to the suit cart track and the plaint rough plan is wrong and there is no such cart track is in existence as alleged by the plaintiff. And the plaintiff already very well know about her predecessor filed a suit for declaration by claiming the suit cart track and the same was dismissed on 12.12.2011 itself, it is a second wrong of litigation created by the plaintiff, hence the suit itself not at all maintainable both on law and on facts and also as per law of limitation.

3. The brief averments of Counter statement filed by the 5th respondent adopted by the 6th and 7th respondents as follows:

3.1. The application is false, frivolous, vexatious and not maintainable both in law and on facts. The 5th respondent owns 65 cents in S.F.No.232/2B which is the ancestral property of this respondent. The alleged cart track to reach the property of petitioner in S.F.No.234/2B via the adjacent land to this respondent's S.F.No.232/2B land are not true. However the claim of petitioner for cart track is only in S.F.No.237 only.

3.2. With a malafide intention and to grab the property by harassing this respondent who is a senior citizen, this suit was filed by the petitioner with a speculation. The imaginative thoughts of the petitioner alleging 12 feet are purely imagination and she is pretending as if she owns it as cart track adjacent to his respondents land in S.F.No.232/2B.

3.3. On the admission of the petitioner alone the cart track is only in S.F.No.237 which is set out as B schedule property. But the fact that S.F.No.237 alone is not the access to the petitioner's land ie., A schedule property and she has to pass through S.F.No's.234/1B, S.F.No.232/2D1, S.F.No's.232/2B, S.F.No's.232/2A2 to reach the petitioners A schedule property situated in S.F.no.234/2B. In this the S.F.No.237 alone is the cart track and other lands are private lands.

3.4. The parent document is in the year 2005 in the name of Velusamy gounder, ie, the father of petitioner's vendor. A bare perusal of that 2005 document may clearly reveal there is no such pathway. However while registering the doc.No.15286/2010 in the name of Marimuthu ie., petitioner's father's vendor. The schedule of property was altered and new introductions in schedule of property details were inserted in that 2010 registered document in a unilateral manner which came to the knowledge of this respondent through this suit.

3.5. The measurements in schedule of property mentioned in 2010, 2012 and 2020 registered instruments itself is controversial to the subsequent details. Similarly in 2020 while the said Rangasamy executes a settlement deed in favour of his daughter ie, petitioner herein the details are modified in respect of the alleged cart track area measurements more and introduces alleged facts in settlement deeds. Since, the registration of documents are their private transactions, the manipulation and fraudulent details entered into schedule of property are not aware to this respondent.

3.6. The 5th respondent owns land in S.F.no.232/2C, S.F.No.232/2D4, S.F.No.232/2E1, S.F.No.232/2E2 and in S.F.No.232/2B and in that lands there is no cart track or no cart track is passing through this lands for the land of petitioner in S.F.No.234/2B. The recitals mentioned in the documents relied by the petitioner are not true and there are no such cart tracks in usage. The alleged cart track claim itself is adjacent to S.F.no.232/2B which is mentioned as S.F.No.237.

3.7. The existence of cart track is B schedule as per petitioner's admission is only in S.F.No.237 which is correct and whereas in other S.F.No's the details of measurements set out in that are false andhow it is arrived are best known to petitioner alone. However by mentioning the S.F.no.237 the petitioner and 4th respondent attempting to claim ownership in the S.F.no.232/2B also by misleading the court.

3.8. This respondent has filed a similar suit against the 4th respondent when a pathway access adjacent to his property is denied to this respondent by 4th

respondent. The said suit OS.No.916/2017 is also pending on the file of this Honourable court only.

3.9. Hence, this suit is filed by the petitioner to harass this respondent in collusion with 3rd and 4th respondent who are none other than the father in laws of petitioner. The lands situated in S.F.No.232/2B, S.F.No.232/2A2, S.F.No.232/2D2, S.F.No.232/2C is the ancestral property of this respondent and after the effected partition this respondent is retaining the lands situated in S.F.No.232/2B, S.F.No.232/2C, S.F.No.232/2E1 and S.F.No.232/2E2 and the lands in S.F.No.232/2D4, S.F.No.232/D3 are purchased by this respondent.

3.10. The land of this respondent in S.F.No.232/2B is reached only via the oornatham land in S.F.no.237 and the access to S.F.No's.232/2C, S.F.No.232/2B, S.F.No.232/2D2 can be reached only among the other surrounding lands as per the effected partition deed including the S.F.No.232/2A2.

3.11. Though the interim order is granted only for S.F.No.237 set out as B schedule this respondent by respecting the order of the court has never stopped the petitioner even though there is no need to permit them when there is no cart track and no case in respect of S.F.No.232/2B and no specific order in respect of this respondents absolute property in S.F.No.232/2B and the petitioner's S.F.No.232/2B land is also not subject matter of the suit.

4. Point for Consideration:-

Whether the petition under Order 39 rule 1 and 2 of CPC is to be allowed?

5. Points:-

5.1. Heard both side. Perused records. Both side admitted facts that the plaintiff's father R.Rangasamy purchased the A – schedule property from one Marimuthu through the sale deed dated 23.01.2012. Further the Rangasamy executed gift settlement deed infavour of his daughter, the plaintiff on 18.12.2020 through the doc.No.15760/2020.

5.2. The plaintiff's case is, through her father’s sale deed, B – schedule cart track has been mentioned to reach the A – schedule property. The defendants’ case

is the suit property originally belongs to Chinna Mandiriappa gounder and Peria Mandiriappa gounder. The partition taken between them in doc.No.1720/1977, the A – schedule alloted to Chinnamandiriappa gounder and no such cart track was mentioned to reach the A – schedule property in the partition deed.

5.3. Further an exchange deed executed between Palanisamy gounder, Periamandiriappa gounder and Ganapathi gounder, Rakkathal under the exchange deed the 12 links cart track situated at Northern portion in S.F.No.233/4 Thalakarai village was mentioned. The said cart track commonly used by this defendants vagaiyara and Periamandiriappa gounder, Chinnamandiriappa gounder vagaiyara.

5.4. The Chinnamandiriappa gounder had two sons namely Dhandapani and Myilsamy and the Chinnmandiriappa gounder's sons and legal heris executed sale deed in favour of Velusamy inrespect of A – schedule property. At the time of execution of sale deed, the cart track situated at Northern portion in S.F.No.233/4 which running towards West – East direction width of 12 links (ie., around 8 feet) and North – South cart track situated at Periya Mandhiriyappa gounder land and purposely without having right in S.F.No.234/1. The said Velusamy gounder and his vendor include this defendants' property and mentioned as cart track situated thereon.

5.5. The said Velusamy settled the suit property in favour of his son Marimuthu. Further the Marimuthu sold the suit property to Rangasamy who is the plaintiff's father. Further the defendants' contents the plaintiff is having only right to use the cart track starts from Udumalai to Senjerimalai main road width of 12 links alone which is running towards West East direction at Northern portion of this defendants' property in S.F.No.233/4 and at the end of Eastern portion of S.F.No.233/4. The plaintiff have to reach her land through the North South cart track which is situated in Periamandiriappa gounder land. The plaintiff have no right to claim any 12 feet North South cart track in S.F.No.233/4, 233/5 and S.F.No.234/1B. Because no such 12 feet width North South cart track available in S.F.no.233/4, 233/5 and 234/1B.

5.6. Hence, as per the defence, the defendants challenging the existence of cart track as mentioned in the B – schedule property. Hence, the title of B – schedule property is under dispute, the plaintiff ought to have prove their usage right of cart track through the B – schedule as mentioned in the plaintiff by letting oral or documentary evidences at the time of trial. The prayer in this interim application and the main suit are one and the same. Without deciding the right of plaintiff to use the B – schedule cart track to reach the A – schedule property this court can't grant any order or temporary injunction. Hence, this petition is dismissed.

In the result, this petition is dismissed. No cost.

Dictated to the Steno-typist and directly typed by her in computer, and corrected and pronounced by me in open court this the 30th day of April 2024.

Sd/N.Renuga

District Munsif,
Sulur.

List of witnesses on petitioner side:

Nil

List of documents on petitioner side:-

Ex.P.1	23.01.2012	Sale deed	Certified copy
Ex.P.2	18.12.2020	Settlement deed	Certified copy
Ex.P.3	30.12.2020	10(1) chitta for S.F.No.234/2B, S.F.No.234/2A Thalakarai village	Online copy
Ex.P.4	04.01.2024	Report by VAO, Thalakarai village	True copy
Ex.P.5	27.10.2010	Settlement deed	Certified copy

List of witnesses on Respondents side:-

Nil

List of documents on Respondents side :-

Ex.R.1	21.04.2005	Sale deed	Certified copy
Ex.R.2	12.12.2011	Judgment in OS.No.251/2006 on the file of Palladam District Munsif Court	Court Certified copy
Ex.R.3	12.12.2011	Decree in OS.No.251/2006 on the file of Palladam District Munsif Court	Court Certified copy

Ex.R.4	12.10.2022	FMB for S.F.No.232 Thalakarai village	Online copy
Ex.R.5	---	Rough plan	---

Sd/N.Renuga

District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.2/2021 in
O.S.No.14/2021
Dated : 30.04.2024
DMC, Sulur.