

**IN THE COURT OF THE DISTRICT MUNSIF, SULUR.**Present : **Tmt.N.Renuga**, B.A., B.L.,

District Munsif, Sulur

Tuesday, the 21<sup>st</sup> day of November 2023**I.A.No.2/2023****in****O.S.No.27/2023**

K.Ramesh

...Petitioner/ Plaintiff

/ Vs /

1. Sangeetha

2. S.Savitha

3. S.Sathya

...Respondents / Defendants

This petition is coming on 06.11.2023 for final hearing before me in the presence of Thiru.B.Muralidharan, Advocate for the Petitioner and Thiru.M/s.Panchapakesan Associates, for the Respondents and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

**ORDER**

Petition filed by the petitioners under Order 39 rule 1 and 2 of CPC to an order of temporary injunction restraining them from anyway disturbing with petitioner right to use the suit cart track as easement of necessity and easement of grant till disposal of the suit and pass an order of ad-interim injunction to that effect till disposal of the petition.

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

1.1. The subject matter of the suit is the 12' width North South passage in S.F.No.304/1c namely the pathway referred as A, B, C, D in the rough plan and 12 feet width East West passage in S.F.No.304/1c referred as A, E, F, G in the rough plan and easement of necessity and easement by grant referred in both the plaintiff's documents and respondent's father Subramaniyan's document. In the sale deed dated 08.04.2002 namely sale deed secured by petitioner father Kuppusamy from Ramakrishnan. The suit pathway is clearly referred as Mamool pathway namely

pathway through which petitioner and respondent can reach their respective property and the said Mamool cart track is also referred in petitioner document settlement deed dated 30.06.2021 executed by Kuppusamy to his son the petitioner.

1.2. The sale deed dated 29.03.2006 is a sale deed secured by the respondents' father late Subramanian as a proprietor of Shanthi Constructions and in that sale deed also the suit cart track is referred as mamool cart track only through which both parties can reach their respective property.

1.3. Now Subramanian is no more and respondents are his daughters. Now through their servant the respondents are disturbing with petitioner/plaintiff right to use his cart track right to use mamool cart track. Hence, the petition.

**2. The written statement adopted as (counter statement) filed by the Respondents as follows:**

2.1. The application is false, frivolous, vexatious and unsustainable, both in law and on facts of the case. The petitioner/plaintiff has no right in any pathway in S.F.No.304/1C. The respondents/defendants specifically stated that no 12 feet sidth North South pathway exists in S.F.No.304/1C nor 12 feet width East West pathway exists in S.F.No.304/1C.

2.2. The contention of the petitioner/plaintiff that the suit property is the only pathway available to reach the schedule 'A' property and the suit property can be accessed only through the suit property i.e., the 12 feet pathway shown in rough plan is false and hereby denied. The petitioner/plaintiff has access to their land through lands owned by him in S.F.No.293/3D1, 293/3A4, 304/1B situated on West and South of the schedule 'A' property. In fact the said lands a common half share has been given to petitioner/plaintiff in the settlement deed dated 30.06.2021 itself.

2.3. The petitioner/plaintiff has filed another suit in OS.No.169/2022 before this Hon'ble court wherein a right of pathway to access the present suit property has been claimed as against Jothimani, Ramasamy, Subramaniam, Senthilkumar, Kanagaraj, Kaleeswaran through their lands. As such even according to

petitioner/plaintiff they have other access to the suit property.

2.4. The suit 'A' property has no other access than the 'B' schedule property is also frivolous for the reason that the suit 'A' property along with lands immediately to same lands in S.F.No.304/1E1 originally belonged to father Kuppusamy and was one block of land. As such the suit property was owned by father Kuppusamy, along with 64 cents of land in S.F.No.304/1E1 as one block and that block had access through the lands in S.F.No.293/3D1, 293/3A4, 304/1B situated on West and South. As such the petitioner/plaintiff and his family having divided the property cannot create a land locked area amongst themselves and claim right of easement over the neighbors land. If at all the petitioner/plaintiff entitled to claim easement of necessity, he is entitled to claim easement of necessity only in lands of Kuppusamy which now stands in the name of his mother Subbathal by way of settlement deed dated 30.06.2021.

2.5. The contention of the petitioner/plaintiff that right by way of easement of grant has been created in both sale deed of petitioner/plaintiff and father Kuppusamy are false and hereby denied. No right by way of grant has been grant to father Kuppusamy in land belonging to this respondents/defendants in S.F.No.304/1C. In fact, the vendor of the petitioner/plaintiff namely Ramakrishnan had no right and interest in the lands belonging to this respondents/defendants in S.F.No.304/1C nor was granted any easement right by way of easement of grant. This petition is abuse of process of court and law and deserves to be dismissed.

### **3. Point for Consideration:-**

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

### **4. Points:-**

4.1. Heard both side. Perused records. On perusal of records the plaintiff claiming pathway right to reach his land in S.F.No.304/1C of Patchapalayam village from Northern side mamool cart track by way of the right of Easement by necessity and grant. The defendants who are the Northern side land owners of plaintiff's property has denying the 'B' schedule cart track right of plaintiff as easement by

necessity and grant. Hence, the prima facie case between the plaintiff and defendants to be decided is whether there is an cart track as stated by the plaintiff in 'B' schedule is in existence or not or whether the plaintiff having easement right over the 'B' schedule cart track.

4.2. Without deciding the said issue the possession over the cart track of plaintiff can't be decided now. Further the prayer stated in the main suit and the main prayer in the interim application are one and the same. Hence, without deciding the main issue by examining both side oral and documentary evidences as a interim relief can't be granted. 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 21<sup>st</sup> day of November 2023.

District Munsif,  
Sulur.

**List of witnesses and documents on Petitioner side:-**

Nil

**List of witnesses and documents on Respondents side:-**

Nil

District Munsif,  
Sulur.

Draft/ Fair Order  
I.A.No.2/2023 in  
O.S.No.27/2023  
Dated :21.11.2023  
DMC, Sulur.