

**IN THE COURT OF THE DISTRICT MUNSIF, SULUR.**

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

District Munsif, Sulur

Monday, the 29<sup>th</sup> day of April 2024

**I.A.No.3/2023**

**in**

**O.S.No.38/2023**

M.Ramasamy

...Petitioner/ Plaintiff

/ Vs /

1. N.Sivakumar

2. S.Santhamani

3. The Sub Registrar, Annur

4. The Thasildar, Sulur

5. The District Collector

Coimbatore

...Respondents / Defendants

This petition is coming on 29.02.2024 for final hearing before me in the presence of Thiru.S.Karchick, Advocate for the Petitioner and Thiru.P.K.Praburaam, Advocate for the Respondents and the 3<sup>rd</sup> to 5<sup>th</sup> Respondents are being called absent set exparte 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 and section 151 of CPC to an order of ad-interim temporary injunction or an order in same nature restraining the 1<sup>st</sup> and 2<sup>nd</sup> respondents not to disturb the petitioner's peaceful possession and enjoyment over the suit property what so ever till the disposal of the suit and an order of Ad-interim injunction the same effect till the disposal of the suit.

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

1.1. The petition mentioned properties are situated at Moppiripalayam

village, Sular Taluk and lies in S.F.No.374/8, it is absolutely belongs to petitioner's mother Subbathal by way of exchange deed executed between 1<sup>st</sup> respondent's father Nataraja gounder. Now the 1<sup>st</sup> and 2<sup>nd</sup> respondents have a fraudulent intention to grab the suit property and had created the registered sale deed on 02.03.2022 (2558/2022) and based on the same they had tried to encroach the suit property and subdivide the lands as well as they try to create bogus documents.

1.2. On 23.05.1977 the petitioner's mother Subbathal had purchased the properties located at Moppiripalayam village in S.F.No.374 to an extent of 0.93.1/2 acres + 0.33 acres and in S.F.No.416/1A to an extent of 1.78 acres + 0.10 acres +.010.1/2 acres all along admeasuring total extent of 3.25 acres from Muthumanikkam, Rajabhuvaneshwari, Mythili Velumani by way of registered sale deed No.466/1977.

1.3. The 1<sup>st</sup> respondent's father Nataraja gounder was the adjacent land holder of petitioner's mother Subbathal's land and both of them were holding the lands in S.F.No.374 and S.F.No.416. In the above circumstances on 24.08.1977 said Nataraja gounder and Subbathal have exchanged their respective properties in which Item – 1 of the schedule in exchange deed has specifically transposed to Subbathal in S.F.No.416/1A to an extent of 0.12-1/2 acres and S.F.No.374 to an extent of 0.02-1/2 acres. According to Item – 2 of the schedule in exchange deed has specifically transposed to Nataraja gounder in S.F.No.374 to an extent of 0.02-3/4 acres and the terms were crafter and registered before SRO, Annur via doc.No.926/1977.

1.4. In the aforesaid exchange deed Item – 1 of the land in S.F.No.374 that 12 links width of East – West pathway and public Sewer an extent of 0.02 – 1/2 acres are absolutely transposed to petitioner's mother Subbathal and that is the suit property.

1.5. The petitioner's mother Subbathal enjoyed the suit property without any hindrance in her life time without any force and in free of mind she had bequeathed

the suit property and other properties to petitioner by way of Will dated 29.08.1997, it was registered before SRO – Annur via doc.No.81/1977.

1.6. Subsequently said Subbathal died on 17.03.2022, leaving behind Muthusamy, Ramasamy as her legal heirs, after her demise the WILL came into place and the petitioner holding the lands in S.F.No.374/5 to an extent of 0.33 acres, and in S.F.No.374/6 to an extent of 0.33 acres, S.F.No.374/9 to an extent of 0.93-1/2 acres, S.F.No.416/1A to an extent of 2.05 acres and S.F.No.374/8 to an extent of 0.02-1/2 acres had mutated the Revenue records and enjoyed the suit property.

1.7. The 1<sup>st</sup> respondent's father Nataraja gounder holding the lands in S.F.No.374/3 to an extent of 0.76-1/2 acres, S.F.No.374/2 to an extent of 0.10 acres, S.F.No.374/10 to an extent of 0.74-1/4 acres near by petitioner land and he died. After his demise the successors of Nataraja gounder, namely Palaniammal (Wife), Sundarambal (Daughter), Palanisamy (Son), Sivakumar (Son) had jointly enjoyed the said properties. Subsequently on 01.10.2019, the 1<sup>st</sup> respondent Sivakumar had obtained the release deed from his co-shares namely Palaniammal, Sundarambal, Palanisamy and it was registered before SRO, Annur via doc.No.8018/2019.

1.8. The 1<sup>st</sup> respondent had conveyed the portion of suit property located in S.F.No.374/8 as well as other properties in S.F.No.374/3 to an extent of 0.76-1/2 acres to the 2<sup>nd</sup> respondent and it was registered before SRO, Annur via doc.No.2558/2022 dated 02.03.2022.

1.9. Accordingly the 1<sup>st</sup> respondent's father Nataraja gounder had absolutely transferred 0.02-1/2 acres on the south side of the land owned by him to petitioner's mother Subbathal. As such petitioner's mother Subbathal had transposed 0.02-3/4 acres on the Eastern side of the land owned by her to Nataraja gounder.

1.10. The said land was subdivided as S.F.No.374/8 and it was formed in L – shape. In the L – shape land Blue color marked land is absolutely owned by

petitioner and orange color marked land is absolutely owned by 1<sup>st</sup> respondent's father Nataraja gounder.

1.11. In the circumstances the 1<sup>st</sup> respondent doesn't have any right or title and interest over the East – West pathway and Public Sewer, they are in a cunning manner only to grab petitioner lands the 1<sup>st</sup> respondent had conveyed the said lands to 2<sup>nd</sup> respondent on 02.03.2022 via sale deed No.2558/2022. After creation of fraudulent sale deed this 2<sup>nd</sup> respondent is claiming the rights over the East – West pathway and Public Sewer owned by petitioner.

1.12. In the mean while on 02.02.2023 the 2<sup>nd</sup> respondent with the help of 1<sup>st</sup> respondent tried to put the pinpricks and try to encroach petitioner's blue marked land in a high handed manner, which was thwarted by petitioner with the help of his relatives and friends.

1.13. The 1<sup>st</sup> and 2<sup>nd</sup> respondents mutate the revenue records over the suit property with a malafide intention to suppress the real facts of the 3<sup>rd</sup> to 5<sup>th</sup> respondents and the 3<sup>rd</sup> to 5<sup>th</sup> respondents alone be the responsible persons to maintain the title records and revenue records over and all. Hence, in order to restrain their illegal attempts the petitioner had added the 3<sup>rd</sup> to 5<sup>th</sup> respondents as the necessary parties to the present application. Hence, this petition.

**2. The brief avornment of written statement adopted as counter statement filed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents/ 1<sup>st</sup> and 2<sup>nd</sup> defendants as follows:**

2.1. The application is false, frivolous, vexatious and unsustainable, both in law and on facts of the case. These defendants never know about the will executed by the said Subbathal in favour of the plaintiff and after her demise the will came in to place and the plaintiff holding the lands are all not aware by these defendants. These defendants never encroached or created any forged or fabricated documents over the suit property and at any point of time these defendants never prevented the plaintiff from usage of the suit property.

2.2. The 1<sup>st</sup> defendant father Nararaj gounder acquired property in present S.F.No.374/10, 374/3 and 416/1 of Moppiripalayam village and the plaintiff mother namely Subbathal acquired property in present S.F.No.374/9, 374/6 and 416/1A of Moppiripalayam village. The plaintiff's mother Subbathal and 1<sup>st</sup> defendant's father Natraj gounder havin no accusable cart track to reach their respective lands. The S.F.No.374/10 and 374/9 are adjacent to each other, as like the S.F.No.374/3 and 374/6 are adjacent to each other. The 1<sup>st</sup> defendant's father Natraj gounder want to access from S.F.No.374/10 to S.F.No.374/3 means he would cross through the S.F.No.374/9 which absolutely belonged to plaintiff from Subbathal. As like the plaintiff mother Subbathal want to access from S.F.No.374/9 to S.F.No.374/6 means she would cross through the S.F.No.374/3 which absolutely belonged to the 1<sup>st</sup> defendant father Natraj gounder.

2.3. The said Subbathal and 1<sup>st</sup> defendant's father Natraj gounder are mutually joint together and they decided to form a common cart track at eastern side which running towards north – south direction by 12 links width in S.F.No.374/9 which belongs to the plaintiff's mother Subbathal and southern side which running towards West – East direction by 12 links width in S.F.No.374/3 which belongs to the 1<sup>st</sup> defendant father Natraj gounder. On 24.08.1977 both of them entered in to a exchange deed vide doc.No.926/1977 and the said common cart track is commonly enjoyed by the said Subbathal and Natraj gounder during the year of 1977 onwards. The scope and nature of the exchange deed was to form a common cart track and as per the said exchange deed the "L" shape common cart track subdivided as S.F.no.374/8. Ever since from the date of the said deed the 1<sup>st</sup> defendant father Natraj gounder without any hindrance enjoyed the common cart track subdivided as S.F.No.374/8 as like the plaintiff mother Subbathal also enjoyed the common cart track situated in S.F.No.374/8 in order to reach her land and the RSR also would reveals the S.F.No.374/8 is a common cart track and it is not a absolute property of the plaintiff or his mother.

2.4. The 1<sup>st</sup> defendant father Natraj gounder died intestate on 10.07.2023 by leaving behind his wife Palaniyammal, daughter Sundarammal and sons Palanisamy and 1<sup>st</sup> defendant Sivakumar as his legal heirs to succeed his estate. On 01.10.2019 the legal heirs of Natraj gounder namely Palaniyammal, Sundarammal and Palanisamy are joint together and executed a release deed in favour of the 1<sup>st</sup> defendant by releasing their common 3/4 share right over the Natraj gounder property through vide doc.No.8018/2019 SRO Annur. Thereafter the 1<sup>st</sup> defendant became an absolute owner over the property. On 02.03.2022 the 1<sup>st</sup> defendant executed a registered sale deed to an extent of 0.76-1/2 acres in S.F.No.374/3 of Moppiripalayam village in favour of 2<sup>nd</sup> defendant vid doc.no.2558/2022 and the recitals of the said the sale deed itself would clearly indicates that S.F.No.374/8 is common cart track by using the said common cart track the 2<sup>nd</sup> defendant would reach S.F.no.374/3 and at any point of time these defendants never created forged, fabricated or bogus documents in order to grab the plaintiff property.

2.5. The plaintiff and her mother Subbathal itself admits that the property in S.F.No.374/8 is a common cart track and both of them commonly enjoyed ever since from 1977 onwards and in order to prove the common enjoyment of the property, the revenue records also jointly stands in favour of the plaintiff and the 1<sup>st</sup> defendant predecessor. The plaintiff planed to purchase the property for a lower price from the 1<sup>st</sup> defendant, but the 1<sup>st</sup> defendant refused the illegal demand of the plaintiff and sold the same to the 2<sup>nd</sup> defendant and taking vengeance against these defendants.

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

Whether the petition under Order 39 rule 1 and 2 and section 151 of CPC is to be allowed?

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

4.1. Heard both side. Perused records. Both side admitted facts that, the plaintiffs' mother Subbathal entitled to the property in S.F.No.374 and 416/1A to an extent of 3.25 acres through the sale deed dated 23.05.1977 which is marked as

Ex.P.1. The defendant's father Nataraja gounder entitled to some portion in the same S.F.No.374 and 416 of Mopiripalayam village. The defendant's father Nataraja gounder and the plaintiffs' mother Subbathal both of them executed exchange deed on 24.08.1977 which is marked as Ex.P.2. In the Ex.P.2 the item No.1 is absolutely devolves to plaintiffs' mother Subbathal and the item No.2 absolutely devolves to Nataraja gounder. After that, on 29.08.1997 the Subbathal executed WILL in favour of plaintiff Ramasamy and she died on 17.03.2022. The WILL is marked as Ex.P.3 and the death certificate of Subbathal is marked as Ex.P.4. Subsequent to that, the 1<sup>st</sup> defendant father Nataraja gounder died and his issues all are executed relinquishment deed in favour of 1<sup>st</sup> defendant through the Ex.P.5 on 01.10.2019. Subsequently, the 1<sup>st</sup> defendant executed sale deed in favour of 2<sup>nd</sup> defendant on 02.03.2022 through the Ex.P.6. The computerized patta, FMB, Adangal and kist receipt, EC in respect of suit properties are respectively marked as Ex.P.7 to P.12. The plaint rough plan is marked as Ex.P.13.

4.2. The plaintiffs side case is, that the plaint rough plan Blue marked portion is the 1<sup>st</sup> Item is absolutely belongs to Subbathal through the Ex.P.2 exchange deed. The Orange marked portion is the 2<sup>nd</sup> item which is absolutely belongs to Nataraja gounder through the Ex.P.2. Now the plaintiffs contents that the defendant without any right over the blue marked portion have executed sale deed by giving pathway right in the Blue marked portion to the 2<sup>nd</sup> defendant by way of registered sale deed under Ex.P.6. Hence, the plaintiffs filed the suit by challenging the said sale deed and for permanent injunction to restrain the respondent/defendant from creating any further documents.

4.3. The respondent contents that under the said Ex.P.2 exchanged deed the Item No.1 and 2 are allotted as common pathway to both plaintiffs and defendant's predecessors in title. Hence, his contention is he is having right to executed the sale deed in favour of the 2<sup>nd</sup> defendant in respect of blue marked portion in plaint rough plan.

4.4. On perusal of the Ex.P.2 exchange deed it has been taken between Subbathal as No.1 and Natarajan as No.2 and further the recitals of exchange deed are as follows "இதுநாள் வரை 2 ம் லக்கமிட்டவர் அனுபோக சுவாதீனத்தில் உள்ளதும் இந்த பத்திரத்தில் கண்ட ரூபாய்.900 மதிப்புள்ள 1 வது அயிட்ட சொத்தில் கண்ட வண்டி தடத்தையும், பூமியையும் 1 வது லக்கமிட்டவர் வேறு பாகத்திற்கு சேர்ந்தார்போல் இருப்பதினாலும் போக வர வண்டித்தடம் சௌகரியமாய் இருக்கும் பொருட்டு இனிமேல் இந்த பத்திரத்தின் மூலம் 1 வது அயிட்ட சொத்து, 1 வது லக்கமிட்டவருக்கு சர்வ சுதந்திரமாக சேர்ந்தது என்றும், இதுநாள் வரை 1 வது லக்கமிட்டவருக்கு அனுபவ சுவாதீனத்தில் உள்ளதும் இந்த பத்திரத்தில் கண்ட ரூபாய்.165 மதிப்புள்ள 2 வது அயிட்ட சொத்தில் கண்ட தடம் 2 வது லக்கமிட்டவர் அனுபவித்து வர சௌகரியமாய் இருப்பதினால் இந்த பத்திரத்தின் மூலம் 2 வது அயிட்ட சொத்து, 2 வது லக்கமிட்டவருக்கு சர்வ சுதந்திரமாக சேர்த்தக்கது என்றும், இனிமேல் அவரவர் பாக சொத்துக்களை அவரவர்களே சர்வ சுதந்திரமாய் ஆண்டு அனுபவித்துக்கொள்ள வேண்டியது என்றும், 1 வது அயிட்ட சொத்தைப் பொருத்து இனிமேல் 2 வது நபருக்கோ, 2 வது நபருடைய வாரிசுகளுக்கோ 2 வது அயிட்ட சொத்தை பொருத்து 1 வது நபருக்கோ, 1 வது நபருடைய வாரிசுகளுக்கோ எந்த பாத்தியமும் சம்மந்தமும் இல்லை.

4.5. Hence, the defendant admitted the execution of Ex.P.2 exchange deed by their father. Further as per the said recital, the Blue marked portion which is 1<sup>st</sup> Item under Ex.P.2 which is absolute property of plaintiffs. Without subsequent documents with the plaintiffs, the defendant cannot entered any sale deed by showing the said S.F.No.374/8 as cart track to the 2<sup>nd</sup> defendant. Hence, whether the S.F.No.374/8 is a common cart track and both of them are having right to enjoy are the matters pleaded by the defendants to be proved by the defendant in the course of trial. The prima facie case of title over the suit property is established by the plaintiffs. If this petition is not allowed the defendants having chance to create further document, it will cause hardship to the plaintiff. Hence, the balance of

convenience in favour of plaintiffs. In the interest of justice this petition is allowed.

***In the result, this petition is allowed granting temporary injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> respondents not to disturb the petitioner's peaceful possession and enjoyment over the suit property what so ever till the disposal of the suit. 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 29<sup>th</sup> day of April 2024.

Sd/N.Renuga

District Munsif,  
Sulur.

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

Nil

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

<b>Ex.P.1</b>	23.05.1977	Sale deed	Certified copy
<b>Ex.P.2</b>	24.08.1977	Exchange deed	Certified copy
<b>Ex.P.3</b>	29.08.1997	Will	Certified copy
<b>Ex.P.4</b>	01.04.2022	Death certificate of Subbathal	Original
<b>Ex.P.5</b>	01.10.2019	Relinquishment deed	Certified copy
<b>Ex.P.6</b>	02.03.2022	Sale deed	Certified copy
<b>Ex.P.7</b>	30.01.2023	10(1) chitta for S.F.No.374/6, 374/9, 416/1A, 374/8, 374/3, 374/5 Moppiripalayam village	Online copy
<b>Ex.P.8</b>	31.03.2023	FMB for S.F.No.374 Moppiripalayam village	True copy
<b>Ex.P.9</b>	31.03.2023	Toppo sketch in Moppiripalayam village	True copy
<b>Ex.P.10</b>	31.03.2023	Adangal extract in S.F.no.374/5, 374/6, 374/8, 374/9, 416/1A at Moppiripalayam village	True copy
<b>Ex.P.11</b>	24.01.2023	Kist receipt	Original
<b>Ex.P.12</b>	28.03.2023	Encumbrance certificate in S.F.No.374 at Moppiripalayam village from he period of 0.01.1975 to 25.03.2023	Online copy

<b>Ex.P.13</b>	---	Plaint plan	---
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**List of witnesses and documents on Respondents side:-**

Nil

Sd/N.Renuga  
District Munsif,  
Sulur.

Draft/ Fair Order  
I.A.No.3/2023 in  
O.S.No.38/2023  
Dated :29.04.2024  
DMC, Sulur.