

IN THE COURT OF THE DISTRICT MUNSIF, SULUR.

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

District Munsif, Sulur

Monday, the 29th day of April 2024

I.A.No.4/2023

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 3rd to 5th 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 order of temporary injunction by restraining the 1st and 2nd defendants, their men, agents, servants, henchmen or anybody claiming under their name from executing or entering into any new fraudulent transfers pertaining to the suit property based on the sham and nominal sale deed dated 02.03.2022 registered in SRO, Annur via document No.2583/2022 in any manner what so ever till the

disposal of the suit and an order of ad – interim injunction to the same effect till the disposal of the petition.

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

1.1. The petition mentioned properties are situated at Moppiripalayam village, Suler 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 1st respondent's father Nataraja gounder. Now the 1st and 2nd 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 1st 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 1st 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 1st respondent Sivakumar and 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 1st 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 2nd respondent and it was registered before SRO, Annur via doc.No.2558/2022 dated 02.03.2022.

1.9. Accordingly the 1st 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 1st respondent's father Nataraja gounder.

1.11. In the circumstances the 1st 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 1st respondent had conveyed the said lands to 2nd respondent on 02.03.2022 via sale deed No.2558/2022. After creation of fraudulent sale deed this 2nd 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 2nd respondent with the help of 1st 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 1st and 2nd respondents mutate the revenue records over the suit property with a malafide intention to suppress the real facts of the 3rd to 5th respondents and the 3rd to 5th 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 3rd to 5th 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 1st and 2nd respondents/ 1st and 2nd 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 1st 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 1st 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 1st 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 1st defendant father Natraj gounder.

2.3. The said Subbathal and 1st 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 1st 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 1st 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 1st defendant father Natraj gounder died intestate on 10.07.2023 by leaving behind his wife Palaniyammal, daughter Sundarammal and sons Palanisamy and 1st 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 1st defendant by releasing their common 3/4 share right over the Natraj gounder property through vide doc.No.8018/2019 SRO Annur. Thereafter the 1st defendant became an absolute owner over the property. On 02.03.2022 the 1st 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 2nd 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 2nd 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 1st defendant predecessor. The plaintiff planed to purchase the property for a lower price from the 1st defendant, but the 1st defendant refused the illegal demand of the plaintiff and sold the same to the 2nd 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 1st defendant father Nataraja gounder died and his issues all are executed relinquishment deed in favour of 1st defendant through the Ex.P.5 on 01.10.2019. Subsequently, the 1st defendant executed sale deed in favour of 2nd 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 1st Item is absolutely belongs to Subbathal through the Ex.P.2 exchange deed. The Orange marked portion is the 2nd 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 2nd 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 2nd 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 1st 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 2nd 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 by granting temporary injunction by restraining the 1st and 2nd defendants, their men, agents, servants, henchmen or anybody claiming under their name from executing or entering into any new transfers pertaining to the suit property based on the sale deed dated 02.03.2022 registered in SRO, Annur via document No.2583/2022 in any manner 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 29th day of April 2024.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses and documents on Petitioner side:-

Nil

List of witnesses and documents on Respondents side:-

Nil

Sd/N.Renuga
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.4/2023 in
O.S.No.38/2023
Dated :29.04.2024
DMC, Sulur.