

IN THE COURT OF THE DISTRICT MUNSIF, SULUR.

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

District Munsif, Sulur

Wednesday, the 22nd day of November 2023

I.A.No.2/2020

in

O.S.No.72/2020

K.V.Kuppusamy

...Petitioner/ Plaintiff

/ Vs /

1. K.Velusamy
2. K.Kandasamy
3. K.Rameshkumar
4. K.Maheshkumar
5. V.Rajendran
6. N.Krishnasamy
7. V.Padmanaban
8. P.Neeladevi
9. R.T.Anitharani
10. R.Pritthiviraj
11. G.Sridhar
12. R.Krishnakumar
13. R.Vatchala
14. S.Hemalatha
15. R.Haridhas
16. Sangeetha
17. L.Subramaniyan
18. G.Ayyavu
19. E.Thilagam
20. S.Gokularaman
21. Sivaprintha Gokularaman
22. S.Umamaheswari
23. M.Loganathan
24. Punitha
25. R.Sangeetha
26. S.Karthikeyan
27. S.Sampathkumar
28. M.Palaniappan
29. V.Valarmathi
30. Sathyabarathi Rajendran
31. K.Rajendran

32. P.Sri Latha
33. Balaji Arumugam
34. Lalithakala Samundeswari Balaji
35. P.Umamaheswari
36. D.Mahalakshmi
37. S.Thangavel
38. M.Sri Ranjani
39. R.Sathiskumar
40. G.Rokini
41. K.Kalaivani
42. V.Ananthakumar
43. K.Nagarajan
44. Premkumar Raju
45. M.Arivukarasi
46. K.Navaneethan
47. S.Masilamani
48. N.Sivasankar
49. N.Pushbalatha
50. M.Banureka

...Respondents / Defendants

This petition coming on 12.10.2023 for final hearing before me in the presence of Thiru.R.Mahesan, Advocate for the Petitioner and Thiru.B.Muralidharan, Advocate for R1 to R5, R9, R12, R13, R16 to R23, R30, R31, R35, R37, R43, R46, R49 and R50 Respondents and R10, R11, R14, R15, R24 to R29, R32 to R34, R36, R38 to R42, R44, R45, R47 and R48 Respondents are called absent set exparte 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 of CPC to an order of temporary Injunction by restraining the respondents, their men, servants, agents from interfering the petitioner's peaceful possession and enjoyment of the suit property.

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

1.1. The petitioner/plaintiff filed main suit for permanent injunction the respondents/defendants are neighbor land holders of the suit property. The suit

property is Ease West and North South cart track which run through S.F.No.154, 155 and 156 of Kannampalayam village. The 1st to 4th defendants have properties in S.F.No.156 and 159 they converted into house sites in the name as VELAN VILLAS layout along with 3rd and 4th defendants and sold in favour of the 5th to 50th defendants.

1.2. On 04.04.1986 the plaintiff's wife Padmavathi and the 1st and 2nd defendants and along with other persons as entered into a cart track agreement in respect of I item of the property. The II item is the absolute property of plaintiff and it is situated in S.F.No.155/1B. Through the II item the defendants and the purchaser of the defendants' house sites are used the II item of the property to reach their respective plots illegally. The plaintiff have tried to stop the illegal activities of the defendants.

1.3. Further the cart track agreement entered by plaintiff's wife Padmavathi with 1st and 2nd defendants is only to reach the agricultural land of the 1st and 2nd defendant. But the 1st and 2nd defendants has plotted out their agricultural land and sold it to 5th to 50th defendants by suppressing the said facts the defendants filed suit in OS.No.168/2019 before this court and got ad interim injunction.

1.4. The defendants are having alternative way to reach their respective plottes from Kannampalayam Panchayath road (S.F.No.179) by suppressing the said road the defendants filed suit in OS.No.168/2019. Further the defendants executed road settlement deed in favour of Kannampalayam Panchayath on 01.08.2014. Hence, they are having pathway to reach their land through the road mentioned in the settlement deed. Hence, the 1st to 4th defendants and the purchasers who are the 5th to 50th defendants are not having any right to reach their land through the plaintiff's property by setuping right from the pathway agreement from the plaintiff's wife. Hence, the plaintiff filed the main suit for permanent injunction and this petition.

2. The brief averments of counter statement filed by the respondents R1 to R5, R9, R12, R13, R16 to R23, R30, R31, R35, R37, R43, R46, R49 and R50 as follows:

2.1. The petition is false, frivolous and unsustainable in law and on facts of the case. The 1st and 2nd respondents are brothers and 3rd , 4th respondents are children of the 2nd respondent. The 1st respondent purchased the property on 29.07.1976 and he transferred a part of the property Southern side part consisting of 2 acres 2 cents to his brother the 2nd respondent and retained the rest of their property. The 2nd respondent transferred his property to his sons namely Ramesh Kumar and Mahesh Kumar the 3rd and 4th respondents as per settlement deed dated 01.12.2010.

2.2. The property referred in 'A' schedule of the petition mentioned property is a common cart track. As per registered agreement dated 04.04.1986 between 1st and 2nd respondents and her mother Nachammal on the one hand and late Padmavathi namely wife of the petitioner formed the common cart track as referred in schedule 'A' of the petition mentioned property. As per registered agreement both of them considered the cart track referred in schedule 'A' of the suit schedule as common to both of their properties and it is the only cart track to reach the 1st to 50th respondents their property. In the sale deed dated 21.02.1994 executed by the 1st respondent to the 2nd respondent and in the settlement deed dated 01.12.2010 the 'B' schedule cart track is clearly referred.

2.3. The petitioner who is claiming right through late Padmavathi cannot dispute the respondents' right of enjoyment of the common cart track referred in schedule 'A' of the suit schedule formed as per registered agreement dated 04.04.1986.

2.4. The 3rd and 4th respondents have developed a layout namely "VELAN VILLAS" in S.F.No.156 and 159 of Kannampalayam village and sold it to the 5th to 50th respondents. On 04.04.1986 the 1st and 2nd respondents and late Padmavathi the petitioner's wife herein entered into an agreement for formation of a cart track. As

per the agreement, the nature of user, measurement everything has been referred.

2.5. The Thadam referred in para 7 of the petitioner's affidavit is nothing but it is a public thadam used by all. The public thadam referred in agreement dated 04.04.1986 subject matter of the suit in OS.No.168/2019 in Honourable District Munsif Court, Sulur is a public thadam and these 1st to 50th respondents already secured an interim order against the petitioner and nobody can restrict the nature of user of the public pathway and the petitioner cannot restrict and the pathway referred in para 9 of the plaint namely pathway from Coimbatore to Trichy main road, in Kannampalaya Road is not the pathway meant for these respondents' property and these respondents never suppressed any other mode of convenience.

2.6. The petitioner and respondents are using the cart track subject matter of the petition mentioned property and since the students from the petitioner's educational institutions are using it black tapped it. He cannot take advantage of it and block the respondents' right to use the common cart track subject matter of the suit.

2.7. It is not a pathway meant only for agricultural operation and it is a common pathway in user of the students from petitioner's educational institutions and also the owners of layout site 1st to 50th respondents. It is rightly the subject matter of OS.No.168/2019 District Munsif Court, Sulur and it is rightly referred in the suit and relief sought for in the suit.

2.8. Since the cart track subject matter of the petition mentioned property namely subject matter of the agreement dated 04.04.1986 is a common cart track in common user of both students from petitioner's educational institutions and 1st to 50th respondents.

2.9. When these 1st to 5th respondents have already filed suit in OS.No.168/2019 and secured an interim order, the petitioner herein by misinterpreting the terms of an agreement for formation of cart track namely 04.04.1986 has malafidely filed the suit just to block these respondents' user of the cart track namely common cart track in user for both the 1st to 50th respondents and

the students of petitioner's educational institutions. Hence, the petition is to be dismissed.

3. Point for Consideration:-

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

4. Points:-

4.1. Heard both side. Perused records. This petition filed by the petitioner/plaintiff for temporary injunction. The petitioner/plaintiff case is he having property in S.F.No.154, 155/1, 156/2, 159/8, 158/2, 155/2 of Kannampalayam village. The 1st item of the suit property is situated in S.F.No.154, it is a 30 feet East West and North South cart track. It is run through S.F.No.155/2 and 156.

4.2. The 1st and 2nd respondents/defendants 1 and 2 are the absolute owner of the property in S.F.No.156 and 159 of Kannampalayam village. They converted the said property into house sites along with 3rd and 4th respondents/defendants. They sold house sites in favour of 5th to 50th respondents/defendants. The petitioner/plaintiff's wife Padmavathi has entered cart track agreement with 1st and 2nd respondents/defendants on 04.04.1986 which runs through S.F.No.155/2 and 156. In the said cart track agreement, the conditions stated as the common cart track is only to reach the agricultural land in S.F.No.156 and only for the purpose of Agricultural activities. But the 1st and 2nd defendants converted land in S.F.No.156 into house sites, hence the petitioner pleads that the respondents/defendants can't use the Item No.1 pathway to reach their respective house sites.

4.3. The petitioner/plaintiff has not add her wife as a another plaintiff in the suit and in this petition. Further he is not filed this suit as a representative agent of his wife Padmavathi. Hence, the parties to the cart track agreement in respect of Item No.1 is necessary party to the petition and this suit.

4.4. Further without adding the necessary party in respect of Item No.1 this court cannot decide the interim application inrespect of item No.1 of petitioner mentioned property. The main matter between the plaintiff and defendants is to be

decided is whether the Item No.1 cart track is only for the purpose of agricultural use or not? Hence, the matter to be decided in the main case and in this application are one and the same. Hence, temporary injunction in respect of the main relief can't be granted.

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 22nd day of November 2023.

District Munsif,
Sulur.

List of witnesses on petitioner side:

Nil

List of documents on petitioner side :-

Ex.P.1	04.04.1986	Pathway agreement	Certified copy
Ex.P.2	05.07.1993	Sale deed	Xerox copy
Ex.P.3	14.11.2005	Sale deed	Xerox copy
Ex.P.4	25.02.2013	Settlement deed	Xerox copy
Ex.P.5	17.12.2019	Encumbrance certificate	Online copy
Ex.P.6	01.08.2014	Road settlement deed	Certified copy
Ex.P.7	26.04.2018	Settlement deed	Certified copy
Ex.P.8	---	Photos and CD	Original
Ex.P.9	---	Velan Villas layout plan	Xerox copy
Ex.P.10	10.01.2020	FMB for S.F.No.154, 155, 156, 159 of Kannampalayam village	---
Ex.P.11	---	Plaint in OS.No.168/2019	Xerox copy

List of witnesses and documents on Respondents side:-

Nil

District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.2/2020 in
O.S.No.72/2020
Dated : 22.11.2023
DMC, Sulur.