

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

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

District Munsif, Sulur

Wednesday, the 4th day of December 2024

I.A.No.2/2024

in

O.S.No.112/2024

P.Muthuraj

...Petitioner/ Plaintiff

/ Vs /

1. Muthukumar Gounder @ Muthukumarasamy gounder

2. M.Palaniyammal

3. M.Mayilsamy

...Respondents/ Defendants

This petition coming on 26.11.2024 for final hearing before me in the presence of Mr.K.Prabhuram and Mr.M.S.Giridharan, Advocates for the Petitioner and Mr.E.Gopala Krishnan, Advocate 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 petitioner under Order 39 rule 1 and 2 of CPC to an order of Temporary injunction against the respondents his men, agents, servants, partisans or any persons any manner in any way interfering with petitioner peaceful possession and enjoyment of scheduled mentioned property described in the petition by petitioner till the disposal of the suit and grant an ad interim injunction to the said effect till the disposal of this application.

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

1.1. The Item I of the petition mentioned property and other properties are absolutely belonged to one Angammal sale deed doc.No.275/1939. In the said sale deed itself the Item II of the petition mentioned property common cart track clearly mentioned and the Item II cart track is to reach the Item I of the petition mentioned

property. During the lifetime of Angammal executed a settlement in favour of her daughters Sellammal and Nachammal and both of them jointly having $\frac{1}{2}$ share right over the property. Without making any partition the said Nachammal sold her undivided $\frac{1}{2}$ share property in favour of one Chinnasamy and balasubramaniyam.

1.2. On 21.01.1985 the said Chinnasamy, Balasubramaniyam and Sellammal are joint together and entered into a partition deed over their common property. The said Sellammal sold her property in favour of one Pechiammal and Pechiammal executed a settlement in favour of petitioner and the petitioner became an absolute owner of the property and he was in possession and enjoyment of the property without an hindrance.

1.3. The respondents' property located on front portion of East West Itteari road, now converted as Thar road. The petitioner and his successor in title more than a 90 years used the common cart track to ingress and egress to reach the Item I property. The respondents are making trouble with other co owner Chinnasamy and Balasubramaniyam, they filed a suit against the respondents and which is still pending. On 24.08.2024 the petitioner carry out the yield coconuts, at the time the respondents by putting dry coconut leaves into the Item II of the petition mentioned property. Immediately the petitioner lodged a police complaint against the respondents before Sulthanpet Police station and the police officials enquired the matter and issued a CSR.No.305/2024 and the respondents removed the coconut dry leaves from the Item II of the property.

1.4. The respondents taking advantage of their properties are situated entrance on both Northern and Southern side of Item II of the property continuous interruption and prevention by the respondents the petitioner unable to use the common cart track situated in Item II of the property in order to ingress and egress to reach the Item I of the property peacefully. The respondents are have no exclusive or independent right to claim any separate title, interest, right over the common cart track situated in Item II of the petition mentioned property. Hence, the

petitioner filed this petition for temporary injunction.

2. The brief averments of Counter statement filed by the 3rd Respondent and adopted by 1st and 2nd Respondent as follows:

2.1. The respondents does not admit any of the averments mentioned in the petition, excepting those that are admitted hereunder. The petitioner claimed the right by virtue of sale deed executed in his favour, he cannot seek claim easmentary right as necessity. The alleged claim of cart track by way of sale deed which is not in existence as mentioned by the petitioner. Further, even in the antecedent title the reference to any petition mentioned cart track is absent.

2.2. the petitioner herein has not filed any application seeking appointment of commissioner to note down the physical features or to measure the petition mentioned property. If the petitioner effected for commission appointment then the real truth would have come to light that there was no existence of cart track as mentioned in the petition field along with affidavit.

2.3. The petitioner have other access to reach their lands and have not come with a clear case as to nature of right they seek to enforce in respect of petition mentioned cart track. No affidavit any third party for using this cart has been filed along with the plaint. A false imaginary claim is made, when the existence of the cart track is totally denied.

2.4. The petitioner has not produced any documents to claim the alleged 20 links petition mentioned cart track. Further the Item II of petition is not a common cart track. The petitioner at no point of time used the Item II of the petition mentioned cart track for ingress and egress. The alleged usage is false and concocted one. The petitioner is cannot be allowed to take two stands in respect of petition mentioned cart track Viz the petitioner cannot stick to title deed and also easement. Further ingredients of Easement are not proved as per procedures established under law. The alleged cart track commences and where it end. Without prima facie proof the petition itself is not maintainable. No cause of action for the

present petition and there are no merits in the present petition. Hence, the petition ought 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. As per the plaint doc.No.5 the plaintiff has been settled with suit I - item of the property by Pechiammal. The Pechiammal purchased the I - item of the suit property from Sellammal through the doc.No.3 dated 26.10.1987. The Sellammal along with one Chinnasamy and Balasubramanian have entered partition through the doc.no.3 dated 21.01.1985. Before that, the Sellammal and one Nachammal have acquired the property through the settlement deed executed by Angammal on 02.06.1967. Further the Angammal purchased the suit I - item of the property from Muthukumara gounder on 13.03.1939 through doc.No.1. Under the said sale deed, the suit II item of the cart track has been mentioned for S.F.No.170/2, S.F.No.170/4. Further the said cart track has been continuously provided for suit I - item of the property as mamool pathway right in the subsequent transactions by the predecessor in title.

4.2. On perusal of the doc.No.3 partition deed dated 21.01.1985 between the Sellammal and Chinnasamy, Balasubramaniam the pathway for S.F.no.170/3 and 4 has been mentioned as “170/3, 4 காலகளில் கிழகோட்டில் கிழமேலாக 20 லிங்ஸ் அகலத்தில் தென்வடலாக நம்மல் ஏ, பி பூமிகளுக்கு ஏ, பி பாகஸ்தர்கள் அவரவர்கள் பாக பூமிகளுக்கு வண்டி கால்நடை வகையறா ஓட்டி தடம் நடந்து கொள்ள உள்ளவர்கள். Further last, it is stated நம் இரு பாகஸ்தர்கள் பங்கு பூமிகளுக்கு ஏற்கனவே வந்து கொண்டிருக்கும் மாமூல் வண்டித்தடத்தின் வழியாகவும் வந்து மேலே கண்ட நம் இரு பாகஸ்தர்களுக்கு இடையே தென்வடல் வண்டி தடத்தின் வழியாகவும் நம் ஏ, பி பாகஸ்தர்களுக்கு வண்டி கால்நடை வகையறா ஓட்டி தடம் நடந்துகொள்ள வேண்டியது”. In addition to that on perusal of doc.No.4 and doc.No.5, the mamool right of pathway has been given as per the partition deed under doc.No.3.

4.3. The defendant on their side have contented as per the Item No.II there is no cart track is in existence in the suit property. The plaintiff has produced photographs as doc.No.10 and the defendant has not produced any document to disprove the non existence of cart track as per II Item of the property. Hence, the prima faci case established by the plaintiff that existence of cart track as per the title deeds and physical features. Hence, the plaintiff's right to use the cart track has to be protected by an order of temporary injunction unless the plaintiff would suffer great loss and hardship. The balance of convenience is stands in favour of petitioner/plaintiff. Hence, in the interest of justice this petition is allowed.

In the result, this petition is allowed by granting temporary injunction the respondents his men, agents, servants, partisans or any persons any manner in any way interfering with petitioner peaceful possession and enjoyment of scheduled mentioned property described in the petition by petitioner till the disposal of the suit. No cost.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 4th day of December 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.2/2024 in
O.S.No.112/2024
Dated:04.12.2024
DMC, Sulur