

IN THE COURT OF THE DISTRICT MUNSIF, SULUR.

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

District Munsif, Sulur

Thursday, the 30th day of January 2025

I.A.No.2/2024

in

O.S.No.117/2024

1. Senthilnathan

2. Kannammal

3. Geetha

4. Ganesan

...Petitioners / Plaintiffs

/ Vs /

Ramalingam

...Respondent/ Defendant

This petition is coming on 21.01.2025 for final hearing before me in the presence of Mr.P.P.Sureshkumar, Advocate for the Petitioners and Mrs.N.Premalatha, Advocate for the Respondent and on hearing of submission of both parties 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 temporary injunction restraining the respondent, their men, agents, servants, relatives, subordinates and any body claiming under him from in any way interfering with the peaceful possession and enjoyment of the suit property and an order of ad interim injunction to that effect pending disposal of this application.

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

1.1. The petitioner is the 4th plaintiff and he filed the petition for other 1st to

3rd petitioners/plaintiffs. Main suit is filed for permanent injunction and mandatory injunction. The petitioners/plaintiffs are adjacent owners, the 1st petitioner/ plaintiff house situated in S.F.No.609/5 and the other petitioners/ plaintiffs property situated in S.F.No.609/14. The suit property is common lane belongs to petitioners/ plaintiffs and respondent/ defendant in S.F.No.609/16. The 1st petitioner/ plaintiff is doctor, he acquired the suit property through settlement deed dated 25.05.1998 by his father, patta also stands in the name of 1st petitioner/ plaintiff. The 2nd to 4th petitioners/ plaintiffs are legal heirs of Subramanian, after death of Subramanian the suit property in S.F.No.609/14 possessed by the 2nd to 4th petitioners/ plaintiffs. The suit property is the East West common lane belongs to petitioners/ plaintiffs and respondent/ defendant in natham S.F.No.609/16 and the natham adangal also described the suit property is common lane.

1.2. The suit property only lane to reach the petitioners/ plaintiffs property. The respondent/ defendant after purchased his property recently he carried alteration one and all of sudden in the month of May 2023 the respondent/ defendant constructed septic tank and dug a bore well in the common lane. Inspect of the petitioners/ plaintiffs objection he continued the said activities. Further the respondent/ defendant plan to change his name for the common lane. Hence, the 4th petitioner/ plaintiff made complaint before RDO and the RDO passed order on 09.06.2023.

1.3. The petitioners/ plaintiffs are removed the gate installed by the respondent/ defendant in the common lane and enjoying the property as usual. Further the respondent/ defendant with intent to illegal gate on 02.09.2024 he made attempt to construct a gate and it was prevented by the petitioners/ plaintiffs. Hence, the petitioners/ plaintiffs filed the present suit for permanent injunction and mandatory injunction and the present petition for temporary injunction till disposal of the suit.

2. The brief averments of written statement filed by the defendant adopt as counter statement as follows:-

2.1. The petition is baseless frivolous, false, vexatious and unsustainable under law and on facts. It is admitted by the respondent that the S.F.No.609/14 and 609/15 are the properties of plaintiffs. The respondent, denied the fact lane situated in S.F.No.609/16 is common lane. The documents relayed from 1 to 12 in the plaint are belongs to plaintiffs property not in respect of suit property. The common lane as alleged by the plaintiffs in S.F.No.609/16 is absolutely belongs to this defendant alone. The RDO order dated 09.06.2023 is denied as false. The story is invented for the purpose of filing of the suit. In the year on 15.09.1923 one Meenachi Thevar, Appachi Thevar, Marudha Thevar, Kandasamy Thevar all four have executed partition deed in doc.No.1038/1979 and as per the partition deed the 'A' schedule allotted to Meenachi Thevar, 'B' schedule allotted to Appachi Thevar, 'C' schedule allotted to Marudha Thevar and 'D' schedule allotted to Kandasamy Thevar.

2.2. In the said partition deed they have stated the suit property as "நம்மளுக்கு வீடு முன்வாசல் வகையறாக்களுக்கு நடந்துகொள்ள நாங்கள் மேற்படி இடத்தில் பொதுவாக தென்புறத்தில் கிழமேலாக விடப்பட்டிருக்கும் 4 அடி தடம் போக மீதி இருக்கும்" alone stated in the partition deed with the measurement of 60 feet length and 4 feet breath. The said lane is left for the property holders on the Southern side.

2.3. Further the common lane is absolutely belongs to the defendant's father S.A.Muthu and after that by succession it was belongs to the defendant and enjoy by the defendant. The 'B' schedule allotte Appachi Thevar is the father of Muthu jothidar and S.A.Subramaniam. The said Muthu Jothidar is the father of this defendant. The S.A.Subramaniam is the father of 1st plaintiff. As per the partition deed, the Muthu Jothidar entitled the properties and he entitled common lane also. The S.A.Subramaniam who was not succeeded the properties with pathway, he

ceased to be entitled for common lane. Further the 1st plaintiff's father is allowed to enjoy the Eastern side pathway as per the partition deed not the suit lane.

2.4 The said suit property is not a common pathway it is only for the parties in the partition deed. As per partition deed dated 10.04.1977, the disputed lane and the BCD houses front portion are allotted to the 1st plaintiff's father Subramaniam and defendant's father Muthu Jothidar. Further the said front yard of the said house is allotted to Muthu Jothidar and the remaining 'A' schedule property has been purchased by the this defendant through the sale deed dated 08.10.1999. The Subramaniam has executed a deed in favour of his 2nd wife Palaniammal in doc.No.928/1990 and his right over the East West lane has been extinguished through the said document. The 1st plaintiff's father entitled S.F.No.609/15 without any pathway right he can't claim the lane or pathway in S.F.No.609/16.

2.5. Further this defendant purchased the other properties in S.F.No.609/20 hence, the suit property is with the enjoyment of this defendant. As per the parental deed, the S.F.No.609/14 is belongs to Kandasamy Thevar and his one of the legal heir is Subramaniam, who is the husband of 2nd plaintiff and father of 3rd and 4th plaintiffs. The said Kandasamy Thevar during his lifetime itself have sold the 'D' schedule property to one Pechiammal along with front yard in doc.No.1112/1929. Hence, he ceased right over the suit pathway. Hence, already the plaintiff's father have relinquished their right over the property stated in the partition deed they can't claim right over the pathway. Further the gate situated in the both side of suit cart track is absolutely belongs to this defendant. Further this defendant has not encroached any property and constructed septic tank and bore well. The said east west lane is absolutely belongs to the plaintiffs' 2nd mother Palaniammal and this defendant. The said Palaniammal has sold the property to this defendant. Hence, the defendant alone entitled for the entire extent of east west lane. The plaintiffs has not right over the suit property there is an alternative

pathway is in existence for the plaintiffs' property. Hence, this petition has to be dismissed.

3. Point for Consideration:-

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

4. Points:-

4.1. Heard learned counsels for both the parties and records perused. The plaintiffs filed the main suit for permanent injunction and mandatory injunction. Both side admitted facts that, the 1st plaintiff is absolute owner of S.F.No.609/15 and the 2nd to 4th plaintiffs are absolute owner of S.F.No.609/14.

4.2. The defendant is adjacent land owner. The plaintiffs contents that the S.F.No.609/16 is the common lane belongs to plaintiffs and defendant and the defendant attempted to put gate in the alleged East West common lane. Hence, the plaintiffs filed the present suit against the defendant and filed the present application for temporary injunction. On the side of the defendant, they have stated the S.F.No.609/16 is not a common lane and the property is originally belongs to the ancestor of the plaintiffs and defendant through the document dated 15.06.1929 and the defendant have purchased the entire property allotted under the partition deed by various title deeds from the respective shares hence, the defendant claiming exclusive right over the lane alleged in the suit property.

4.3. Further the petitioners side have marked the Natham adangal for S.F.No.609/16 as பெரது சந்தி in Ex.P.13. On the defendant they have filed documents dated 15.06.1929, 10.04.1974 and 08.10.1999 and contented that the plaintiffs by influencing the revenue officials have obtained the said documents. Hence, in the case on hand, the matter to be decided is whether the suit property is common lane or it is absolutely belongs to the defendant, here the title of suit

property is to be decided. Hence, in this circumstances, without deciding the said title and enjoyment right through oral and documentary evidence this court can't grant any order for temporary injunction.

In the result, this petition is dismissed. No cost.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 30th day of January 2025.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses on petitioners side:-

Nil

List of documents on petitioners side:-

Ex.P.1	25.05.1998	Settlement deed	Certified copy
Ex.P.2	06.08.2024	Natham patta for S.F.No.609/15	Online copy
Ex.P.3	29.04.2024	House tax receipt	Original
Ex.P.4	04.06.2024	Water tax receipt	Original
Ex.P.5	11.06.2024	EP receipt	Original
Ex.P.6	05.06.2017	Death certificate of Subramanian	Original
Ex.P.7	27.07.2021	Legal heirship certificate of Subramanian	Online copy
Ex.P.8	25.07.1991	Release deed	Certified copy
Ex.P.9	11.05.2024	Natham patta for S.F.No.609/14	Online copy
Ex.P.10	22.02.2024	Property tax receipt	Original
Ex.P.11	22.02.2024	Water tax receipt	Original

Ex.P.12	18.06.2024	EB receipt	Original
Ex.P.13	10.04.2023	Adangal register for S.F.No.609/16	True copy
Ex.P.14	01.08.2024	FMB for S.F.No.609, Sulur village	True copy
Ex.P.15	09.06.2023	Memorandum issued by RDO, Coimbatore South	True copy
Ex.P.16	---	Photos Nos.3	Original

List of witnesses and documents on Respondent side:-

Nil

Sd/N.Renuga
District Munsif,
Sulur.

Draft/ Fair Order

I.A.No.2/2024

O.S.No.117/2024

Dated : 30.01.2025

DMC, Sulur.