

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

Present : **Tmt.N.Renuga., B.A., B.L.,**  
District Munsif, Sulur

Wednesday, the 29<sup>th</sup> day of March 2023

**I.A.No.3/2022**

**in**

**O.S.No.142/2022**

1. D.Santhamani

2. D.Navaneethakrishnan

3. D.Karthikeyan

4. Hemalatha

Rep by her power agent S.A.Elangovan

...Petitioners / Plaintiffs

/ Vs /

Nagathal

...Respondent/ Defendant

This petition coming on 14.02.2023 for final hearing before me in the presence of Thiru.P.Suresh, Advocate for the Petitioners and of Thiru.P.P.Suresh Kumar, 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 petitioner under Order 39 rule 1 and 2 of CPC an order to grant an temporary injunction, towards restraining the respondent/defendant, her men, servants, agents, hire links from in any way or any manner or whatsoever towards interfering or trespassing the petitioner No.1 to 3/ Plaintiffs No.1 to 3 peaceful possession and enjoyment over the schedule "A" Item I suit property, 4<sup>th</sup> petitioner/ 4<sup>th</sup> plaintiff peaceful possession and enjoyment over the schedule "A" Item II suit property till the disposal of the suit and to pass an ad – interim injunction to the same effect till the disposal of this petition.

**1. Gist of averment in petition affidavit:-**

1.1. The plaintiffs 1 to 3 are absolute title holders for the schedule "A" Item I suit property, the 4<sup>th</sup> plaintiff is absolute title holder for the schedule "A" Item II suit property. The defendant is illegally claiming portion of the schedule "A" suit

properties without demarcating her belonged schedule "B" suit property. The suit is filed for declaration and Mandatory injunction. The 4<sup>th</sup> plaintiff had executed a general power of attorney vesting her powers to Mr.S.A.Elangovan as her power agent, who is her husband and the document had been notarized on 20.06.2022 as to commence the suit proceedings and it empower him to represent this case.

1.2. The schedule "A" Item I and II suit properties and schedule "B" suit property are originally belonged to S.N.Karuppanna Devar by virtue of sale deed in D.No.44/1960 dated 18.01.1960 registered at Sub – Registrar Office, Suler, Coimbatore in S.F.No.437.

1.3. The schedule "A" Item I suit property is absolutely sold by S.N.Karuppanna Devar in favour of E.Dhandapani by virtue of sale deed in D.No.3652/1995 dated 12.07.1995 registered at Sub – Registrar Office, Suler, Coimbatore. The said E.Dhandapani was died on 13.03.2017 leaving the 1<sup>st</sup> plaintiff as his wife, myself viz., 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs as his sons. Subsequently, the 1<sup>st</sup> to 3<sup>rd</sup> plaintiffs had obtained legal heir ship certificate in Pa.Mu.No.3562/2017/A5 dated 13.06.2017 issued by Thasildhar, South Taluk Office, Coimbatore. The 1<sup>st</sup> to 3<sup>rd</sup> plaintiffs had exercise their act of ownership and they are in absolute possession and enjoyment of the schedule "A" Item I suit property. The 1<sup>st</sup> to 3<sup>rd</sup> plaintiffs also had paid development charges to the government and obtained regularization order for the schedule "A" Item I suit property through proceedings in ந.க.எண்.81/2021/ஆ dated 13.05.2022.

1.4. The S.N.Karuppanna Devar had executed WILL in D.No.195/1988 dated 26.04.1988 registered at Sub – Registrar office, Suler pertaining to his belonged properties including schedule "A" Item II suit property. After, the demise of the said S.N.Karuppanna Devar the beneficiary of the WILL viz., Dhandapani and his son Karthikeyan both had executed a general power of attorney in favour of Mr.s.A.Elangovan in D.No.515/BK IV/2006 dated 13.04.2006 registered at Sub – Registrar office, Suler, Coimbatore. The said Mr.Elangovan in the capacity of power

agent had sold schedule "A" Item II suit property in favour of the 4<sup>th</sup> plaintiff by virtue of sale deed in D.No.9916/2007 dated 10.09.2007 registered at Sub – Registrar office, Sulur, Coimbatore. The 4<sup>th</sup> plaintiff had exercise her act of ownership and she had been in absolute possession and enjoyment of schedule "A" Item II suit property. The 4<sup>th</sup> plaintiff had paid development charges to the government in receipt No.149/2018 – 19 dated 23.04.2018 and obtained regularization order for the schedule "A" Item II suit property through proceedings in ந.க.எண்.027/2018/ஆ dated 23.04.2018.

1.5. The petitioners vested house sites and other house sites had been completely measured through the qualified licensed building surveyor. As per said plan site No.1 is belonged to the 4<sup>th</sup> plaintiff. It's pertinent to note that boundaries are "12 அடி அகல கிழமேல் வண்டித்தடத்திற்கும் - வடக்கு, தென்வடல் ரோட்டுக்கும் - கிழக்கு, 12 அடி அகல கிழமேல் வண்டித்தடத்திற்கும் - தெற்கு, ஷை 437/11 நெ.காலையில் தண்டபாணி, பாண்டியன் ஆகியோர் இடத்திற்கும் - மேற்கு". As such site No.2 is belonged to 1<sup>st</sup> to 3<sup>rd</sup> plaintiffs. It's pertinent to note that boundaries are as " எனது மீதமுள்ள இடத்துக்கும் - கிழக்கு, 12 அடி அகல கிழமேல் வண்டித்தடத்திற்கும் - தெற்கு, நாளது தேதியில் என்னிடமிருந்து கிரையம் பெறும் ரத்னா அவர்களின் 10 செண்ட் இடத்திற்கும் - மேற்கு, பாண்டியன் இடத்திற்கும் - வடக்கு". As such site No.3 is belonged to one said Mrs.Rathna by virtue of sale deed in D.No.3653/1995 dated 12.07.1995 registered at Sub – Registrar office, Sulur, Coimbatore. It's pertinent to note that boundaries are as "12 அடி அகல கிழமேல் வண்டித்தடத்திற்கும் - தெற்கு, நாளது தேதியில் என்னிடமிருந்து கிரையம் பெறும் தண்டபானியின் 5 செண்ட் இடத்திற்கும் - வடக்கு, முனியப்பன் இடத்துக்கும் - வடக்கு, பேச்சியம்மாள் பூமிக்கும் - மேற்கு". As such site No.4 is belonged to one said Mr.Muniappan by virtue of sale deed in D.No.1898/1993 dated 09.06.1993 registered at Sub – Registrar office, Sulur, Coimbatore. It's pertinent to note that boundaries are as "கிழமேல் ரோட்டுக்கும் - வடக்கு, என்னுடைய பூமிக்கும் - கிழக்கு & தெற்கு,

பேச்சியம்மாள் பூமிக்கும் - மேற்கு". As such site No.5 is belonged to one said Mr.Thowlath Nisha by virtue of sale deed in D.No.6258/2016 dated 16.06.2016 registered at Sub – Registrar office, Sulur, Coimbatore. It's pertinent to note that boundaries are as "12 அடி அகல கிழமேல் பொது தடத்திற்கும் - வடக்கு, ரத்தினம் அவர்களின் இடத்திற்கும் - தெற்கு, பாண்டியன் அவர்களின் இடத்திற்கும் - கிழக்கு, முனியப்பன் அவர்களின் இடத்திற்கும் - மேற்கு". As such site No.6 is belonged to Mr.Pandian by virtue of sale deed in D.No.99/1995 dated 11.01.1995 registered at Sub – Registrar office, Sulur, Coimbatore. It's pertinent to note that boundaries are as "12 அடி அகல கிழமேல் பொது தடத்திற்கும் - வடக்கு, கருப்பணத்தேவர் மீதமுள்ள இடத்திற்கும் - கிழக்கும், தெற்கும், செந்தில் இடத்திற்கும் - மேற்கு". So it's obviously seen that the alienations of the said properties are happened right from the year of 1988 the petitioners are ready to prove the extent and physical features for not only schedule "A" Item I and Item II suit properties, but the petitioners are ready to elucidate the said suit issues they are ready to measure the entire six properties in order of tallying the physical location of the properties.

1.6. The said schedule "B" suit property is derived to the said S.N.Karuppanna Devar by virtue of sale deed in D.No.44/1960. As alleged the defendant he had sold the same to Mrs.Kaliammal. The said Kaliammal had sold schedule "B" suit property in favour of Nirmala. The said Nirmala had sold schedule "B" suit property in favour of the respondent/defendant. The boundaries had been totally changed as the years passed, even the said Karuppanna Thevar died long back during the year of 1995 tentatively. In spite, after his demise same boundary for all of the defendant's title documents clearly reveals that they doesn't known about the physical location of the property ie., demarcating the property.

1.7. In those circumstances without knowing about the physical location of the property, the defendant intend to grab the petitioners belonged schedule "A" properties. So, she had illegally came to fence the schedule "A" item 1 property and

half portion of schedule "A" item 2 property. The petitioners successfully thwarted the defendant's illegal activity. The activity of the defendant is in a manner to defeat petitioners rights and to illegally capture their belonged schedule "A" suit properties. In such circumstances she is making hectic attempts to interfere the schedule "A" suit properties. The petitioners without any other alternative remedy, they had come before this Hon'ble court seeking the reliefs as sought for. Hence, this petition.

**2. Gist of averment in written statement adopted as counter filed by the respondent as follows:-**

2.1. The facts that are mentioned in the petition and affidavit are false, frivolous and not maintainable under law or facts. The respondent is the absolute owner of the suit property by virtue of registered sale deed dated 01.12.2006 executed by one Nirmala. The vendor Nirmala purchased the suit property under a registered sale deed dated 30.10.1998 executed by one Kaliasammal. The said Kaliasammal purchased the suit property under a registered sale deed dated 06.07.1992 executed by one S.N.Karuppanna Devar. The said S.N.Karuppanna Devar purchased the properties under a registered sale deed dated 18.01.1960. From the date of purchase the respondent is in lawful possession and enjoyment of the suit property. The suit property is situated in S.F.No.437/11A. After purchase the respondent fenced the suit property with wire fence after proper measurement given by VAO.

2.2. The petitioners 1 to 3 are mother and sons and they are legal heirs of one Dhandapani. After the sale of suit property by said S.N.Karuppanna devar to Kaliasammal, he had nothing to do with the suit property. But again the said S.N.Karuppanna devar without title and right created another sale deed in respect of the suit property in favour of one Dhandapani son of Erulappan on 12.07.1995. After the death of said S.N.Karuppanna devar, his grand son created another document in favour of the 4<sup>th</sup> petitioner on 10.09.2007. The said both documents are ab initio void and sham and nominal documents and has no legal effect and cannot convey any title or right over the suit property.

2.3. But all of sudden the petitioners illegally damaged the wire fence put around the suit property by the petitioner on 01.03.2021. Hence, the respondent and her daughter Shanthamani filed complaint before the Police and the police also enquired the petitioners and husband of petitioner executed undertaking letter to measure the suit property and settle the issue. After then VAO measured the suit property and confirmed the suit property is absolute property of respondent. After then the petitioners filed caveat petition and the respondent also filed caveat petition. After then the petitioners failed to compensate and rectify the damages done by them. After then the petitioners knowing that the suit property is only belong to the respondent, making unlawful attempt to grasp the suit property by unlawful manner.

2.4. The respondent have executed Will dated 01.12.2006 in favour of her daughter Shanthamani who is looking after the respondent. After measurement the petitioners kept quite in their unlawful act to the suit property. But all of sudden on 04.12.2021 with large men and hire links the petitioners again tried to tress pass into the suit property and the unlawful act of the petitioners prevented by the respondent with help of her well wishers. But the petitioners challenged that at any cost they will take the suit property with aid of their void documents. Hence, the petition is 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:-**

Heard learned counsel for both the parties.

4.1. On perusal of records the suit property in S.F.No.437 to an extent of 1.44-1/2 acres originally belongs to one S.N.Karuppanna Devar through sale deed dated 18.01.1960. The said Karuppanna Devar sold to an extent of 10 cents to one Kaliasamma in the year 1992. The said Kaliasamma in turn sold 10 cents to one Nirmala on 1998. The said Nirmala sold the 10 cents to Nagathal the plaintiff in OS.No.221/2021 on 01.12.2006.

4.2. In parallel to said transactions the S.N.Karuppanna Devar sold an extent of 5 cents within specific four boundaries to one E.Dhandapani on 12.07.1995. The said Dhandapani's issues are Santhamani, Navaneetha Krishnan and Karthikeyan. The Hemalatha is the purchaser of the I Item of property in OS.No.142/2022 from the legal heirs of S.N.Karuppanna Devar. One Dhandapani and Karthikeyan are the legal heirs who got properties under the WILL dated 26.04.1988 from the S.N.Karuppanna Devar. They sold the said properties under the WILL to the Hemalatha.

4.3. On perusal of the said documents the S.N.Karuppanna Devar who sold the property under two different sale deeds to one Kaliasammal and E.Dhandapani separately one is for extent of 10 cents and another one is for an extent of 5 cents. After that the said S.N.Karuppanna Devar must have the remaining extent out of 1.44 acres in S.F.No.437. Hence, the main issue in this case is whether the property sold by said Karuppanna Devar to Dhandapani is different one comparing with the property sold to Kaliasammal. It is the main issue to be decided on the merits. After full pledged trial by taking oral and documentary evidences. In this circumstances the temporary injunction cannot be granted.

***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 29<sup>th</sup> day March of 2023.

District Munsif,  
Sulur.

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

Nil

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

<b>Ex.P.1</b>	18.01.1960	Sale deed	Xerox copy
<b>Ex.P.2</b>	12.07.1995	Sale deed	Certified copy
<b>Ex.P.3</b>	---	Death certificate of Dhandapani	Xerox copy
<b>Ex.P.4</b>	13.06.2017	Legal heir ship certificate of Dhandapani	Xerox copy

<b>Ex.P.5</b>	13.05.2022	Sulur Panchayat Office order passed in proceedings No.ந.க.எண்.81/2021/ஆ	Xerox copy
<b>Ex.P.6</b>	13.04.2006	General power of attorney	Xerox copy
<b>Ex.P.7</b>	10.09.2007	Sale deed	Certified copy
<b>Ex.P.8</b>	23.04.2018	Development charges paid receipt in No.149/2018-19	Xerox copy
<b>Ex.P.9</b>	23.04.2018	Sulur Panchayat office order passed in proceedings No.ந.க.எண் 027/2018/ஆ	Xerox copy
<b>Ex.P.10</b>	---	Plan issued by licensed building surveyor	Xerox copy
<b>Ex.P.11</b>	12.07.1995	Sale deed	Xerox copy
<b>Ex.P.12</b>	09.06.1993	Sale deed	Xerox copy
<b>Ex.P.13</b>	16.06.2016	Sale deed	Xerox copy
<b>Ex.P.14</b>	06.07.1992	Sale deed	Xerox copy
<b>Ex.P.15</b>	30.10.1998	Sale deed	Xerox copy
<b>Ex.P.16</b>	01.12.2006	Sale deed	Certified copy
<b>Ex.P.17</b>	07.11.2019	Plan for S.F.No.437/11	Xerox copy
<b>Ex.P.18</b>	02.05.2018	Development charge for S.F.No.437/9 site No.1	Xerox copy
<b>Ex.P.19</b>	---	Plaint in OS.No.221/2021 on the file of District Munsif Court, Sulur	Xerox copy
<b>Ex.P.20</b>	25.06.2022	Patta for suit properties	Original online copy
<b>Ex.P.21</b>	20.06.2022	Power of attorney	Original

**List of witnesses and documents on Respondents side:-**

Nil

District Munsif,  
Sulur.  
Draft/Fain Order  
I.A.No.3/2022 in  
O.S.No.142/2022  
Dated : 29.03.2023.  
DMC, Sulur.