

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

Present : **Tmt.N.Renuga., B.A., B.L.,**
District Munsif, Sulur
Wednesday, the 29th day of March 2023
I.A.No.2/2021
in
O.S.No.221/2021

Nagathal

...Petitioner / Plaintiff

/ Vs /

1. T.Shanthamani
2. T.Navaneethakrishnan
3. T.Karthikeyan
4. Hemalatha

...Respondents/ Defendants

This petition coming on 14.02.2023 for final hearing before me in the presence of Thiru.P.P.Suresh Kumar, Advocate for the Petitioner and of Thiru.P.Suresh, 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 and section 151 of CPC to grant an order of temporary injunction restraining the respondents their men, agents, servants, relatives and any body claiming under them from in any way interfering with the petitioner's peaceful possession and enjoyment of the suit petition mentioned property till the disposal of this suit and grant an order of ad interim injunction to that effect pending disposal of this application.

1. Gist of averment in petition affidavit:-

1.1. The petitioner 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 petitioner is in lawful possession and enjoyment of the suit property. The suit property is situated in S.F.No.437/11A. After purchase the petitioner fenced the suit property with wire fence after proper measurement given by VAO.

1.2. The respondents 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 4th respondent 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.

1.3. But all of sudden the respondents illegally damaged the wire fence put around the suit property by the petitioner on 01.03.2021. Hence, the petitioner and her daughter Shanthamani filed complaint before the Police and the police also enquired the respondents and husband of respondent 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 petitioner. After then the respondents filed caveat petition and the petitioner also filed caveat petition. After then the respondents failed to compensate and rectify the damages done by them. After then the respondents knowing that the suit property is only belong to the petitioner, making unlawful attempt to grasp the suit property by unlawful manner.

1.4. The petitioner have executed Will dated 01.12.2006 in favour of her daughter Shanthamani who is looking after the petitioner. After measurement the respondents kept quiet in their unlawful act to the suit property. But all of sudden on 04.12.2021 with large men and hire links the respondents again tried to trespass into

the suit property and the unlawful act of the respondents prevented by the petitioner with help of her well wishers. But the respondents challenged that at any cost they will take the suit property with aid of their void documents. Hence, the petition is to be allowed.

2. Gist of averment in counter filed by the 2nd to 4th respondents 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 suit is filed for declaration and permanent injunction with false suppression of facts. The plaintiff doesn't know about physical location of suit property, but illegally she is always trying to project her property has been located over defendants belonged property.

2.2. The original facts are that the respondents/defendants 1 to 3 are absolute title holders for the schedule "A" item 1 property. The 4th respondent/defendant is absolute title holder for schedule "A" item 2 property. The petitioner/plaintiff is illegally claiming portion of the schedule "A" properties without demarcating her belonged schedule "B" property. The 4th respondent/defendant had executed a general power of attorney vesting her powers to S.A.Elangovan as her power agent, who is her husband and the same is notarized on 20.06.2022 as to commence suit proceedings and it empower him to represent this case.

2.3. The schedule "A" item 1 and 2 properties and schedule "B" 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, Sulur, Coimbatore in S.F.No.437. The schedule "A" item 1 property is absolutely sold by S.N.Karuppanna devar in favour of E.Thandapani. The said E.Thandapani was died on 13.03.2017 leaving the 1st respondent as his wife 2nd and 3rd respondents/defendants as his sons.

2.4. The S.N.Karuppanna devar had executed WILL in D.No.195/1988 dated 26.04.1988 registered at Sub-Registrar Office, Sulur pertaining to his belonged properties including schedule "A" item 2 property. After the demise of the said

S.N.Karuppanna devar the beneficiary of the EILL viz., Dhandapani and his son Karthikeyan both had executed a general power of attorney in favour of S.A.Elangovan. The said Elangovan in the capacity of power agent had sold the schedule "A" item 2 property in favour of the 4th respondent.

2.5. The respondents vested house sites and other house sites had been completely measured through the qualified licensed surveyor. The respondents are ready to prove the extent and physical features for not only schedule "A" item 1 and 2 properties, but they are ready to elucidated the said suit issues they are ready to measure the entire six properties in order of tallying the physical location of the properties. In those circumstances without knowing about the physical location of the property, the plaintiff intend to grab the respondents 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 activities of the petitioner also amounts to abuse of law, civil courts and civil procedure it does not forms a cause of action and the relief is barred by limitation act. Further, the respondents are in statutory position for all these years, but the petitioner obtained sale deed in the year 2006, but she lacks out of possession and the suit is absolutely barred by limitation act. Therefore the petition ought to be dismissed.

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:-

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 through Ex.P.4. The said Karuppanna Devar sold to an extent of 10 cents to one Kaliasamma on 06.07.1992 through Ex.P.3. The said Kaliasamma in turn sold 10 cents to one Nirmala on 30.10.1998 through Ex.P.2. The said Nirmala sold the 10

cents to Nagathal the plaintiff through Ex.P.1.

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 through Ex.P.10. 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 with the property sold to Kaliasammal is the main issue to be decided on the merits. Further, the main issue to be decided after full pleaded trial and by marking the oral and documentary evidences. In this situation 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 29th day March of 2023.

District Munsif,
Sulur.

List of witnesses on petitioner side:-

Nil

List of documents on petitioner side:-

Ex.P.1	01.12.2006	Sale deed infavour of the petitioner	Certified copy
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Ex.P.2	30.10.1998	Sale deed in favour of Nirmala	Certified copy
Ex.P.3	06.07.1992	Sale deed in favour of Kaliasammal	Certified copy
Ex.P.4	18.01.1960	Sale deed in favour of S.N.Karuppanna devar	Certified copy
Ex.P.5	19.11.2021	Chitta extract for S.F.No.437/11A	Net copy
Ex.P.6	19.11.2021	Adangal extract	True copy
Ex.P.7	07.11.2019	S.F.No.437/11 sketch issued by VAO	True copy
Ex.P.8	02.05.2018	Development charges paid by the petitioner	Original
Ex.P.9	---	Photo for suit property	Original
Ex.P.10	12.07.1995	Sale deed in favour of Dhandapani	Certified copy
Ex.P.11	10.09.2007	Sale deed in favour of Hemalatha	Certified copy
Ex.P.12	---	Photo for suit property after damage	Original
Ex.P.13	---	Photo for suit property after damage	Original
Ex.P.14	05.03.2021	Letter given by Elangovan	Xerox copy
Ex.P.15	05.03.2021	Letter given by Navaneethakrishnan	Xerox copy
Ex.P.16	01.12.2006	Will executed by the Nagathal	Xerox copy

List of witnesses and documents on Respondents side:-

Nil

District Munsif,
Sulur.

Draft/Fain Order
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O.S.No.221/2021
Dated : 29.03.2023.
DMC, Sulur.