

IN THE COURT OF THE DISTRICT MUNSIF, SULUR.

PRESENT : Selvi.J.Starli, M.L.,
District Munsif,
Sulur.

Friday the 24th day of November 2017

Original Suit No.937/2017
O.S.No.17/2010 DMC, Palladam
(O.S.No.2824/2012 PDMC, CBE)

1. Deivasigamani
2. Subramaniam ... Plaintiffs

/ Vs /

1. M/s. K.P.R.Cotton Mills Private Limited
2. K.P.Ramasamy
3. K.P.Deivasigamani
4. P.Nataraj
All defendants are represented
by their power agent Krishnan ...Defendants

This Suit coming on this day for final hearing on 20.11.2017 before me in the presence of Thiru.V.Raveendran, Advocate for the Plaintiff, and of Thiru.K.Gopalakrishnan, Advocate for the defendants, and the defendants having been called absent and set exparte, and on hearing submissions of both the parties and upon perusing the records and having stood over for consideration till this day this Court delivered the following:-

JUDGMENT

Suit for declaration to declare that the plaintiffs are absolute owners

of item I of the suit property and directing the defendants to surrender the possession of item I of the suit property to the plaintiffs and for permanent injunction restraining the defendants, their men, power agents, relatives, family members and any other persons acting on behalf of them from in any way altering the physical feature of the item I of the suit property and to declare that the plaintiffs are the absolute owners of the item II of the suit property and for consequential injunction against the defendants restraining them their men, menials, agents, assigns, staffs, works, relations, family members and any other persons acting on behalf of them from in any way interfering with the plaintiffs peaceful possession and enjoyment of the item II of the suit property and to declare that the plaintiffs are entitled to use and enjoy the suit cart track describe in item 3 of the suit property and for mandatory injunction to remove the obstructions in item 3 of the suit property and to clear the access to the plaintiffs' item I and item II of the suit property and for cost.

2. Gist of Averment in Plaint:-

The 1st plaintiff and father of the 2nd plaintiff, namely, Palanisamy are brothers. They have jointly purchased an extent of Acre 4.42 ½ in SF.No.194 of Arasur Village by way of registered sale deed dated 24.08.1977. From the date of purchase they are in exclusive possession and enjoyment of the property. After purchase, they had mutated the revenue records and spent huge amount for irrigation of such lands by removing rocks from the field. They had laid down underground pipe line from their other field in SF.No.219 of Arasur Village and planted 200 coconut trees in suit properties. Palanisamy died on 09.01.2009. During

his life time, he bequeathed the share in suit property in favour of 2nd plaintiff on 23.02.2004. The plaintiffs are cultivating the fields and enjoying their properties jointly without partition. It is only source of their livelihood. The plaintiffs have access to their suit property only through north-south cart-track runs on eastern side of above property. The northern extremity of above field is 1 to 1 ½ feet higher than the southern side field. Therefore, the said field is cultivated in rainy season by raising manavari crops. But southern side of the above field by raising cash crops and coconut trees continuously through out the years. The defendants are adjacent land owners. The 1st defendant is a private limited company and the other defendants are share holders of 1st defendant company. The defendants purchased the land on northern side and eastern side of the plaintiff land from one Jayaprakash and Rathinam by way of sale deed dated 07.07.2005. The said Jayaprakash and Rathinam having lands of an extent of acre 2.71 ¼ in SF.No.194 of Arasur Village by way of settlement deed dated 10.07.1975 and an extent of 1.14 acre in SF.No.195 of Arasur Village by virtue of settlement deed dated 29.03.1976. 1st defendant is a textile mill which is running on eastern side of plaintiff's land that is 500 feet away from the plaintiff's property. The 2nd defendant has directly purchased the properties in number of acres on the eastern side, northern side and western side of plaintiff property. They compelled the plaintiffs to sell their lands for lower price. The plaintiffs refused to do so. On 06.04.2007 the defendants unlawfully trespassed into the schedule of property and damaged north south fence on the eastern side and removed entire fence and neem trees situated in the fence. They damaged the east-west poli situated on northern end and removed it. They encroached the

plaintiff's property for an extent of Acre 0.64 ½ on northern side and annexed the same with the defendant's property by putting up fence. It is item I of the suit property. The remaining extent of Acre 3.78 on southern side is in continuous possession and enjoyment of the plaintiff which is Item II of the suit property. Further, the defendants put up fence on eastern side of the plaintiffs property in north-south manner, thereby obstructed the north-south cart-track runs immediately on eastern side of the 1st plaintiff and his brother Palanisamy property. It is specified as item III in suit property. The act of defendant is illegal and unlawful work. Afterwards, the plaintiff lodged complaint to the Sulur Police Station, on 06.04.2007, they inspected the suit property but they had failed to take any action. The plaintiff approached the Hon'ble High Court in Crl. O.P.11343/2007, and thereafter, case was registered against the defendants as per the direction given by the Hon'ble High Court. But, they had reported the same as mistake of fact. Against the same plaintiff filed protest petition and thereafter, filed private complaint in CCNo.245/2009. The defendants have filed suit in O.S.760/2007 against the plaintiff before the Additional District Munsif Court, Coimbatore, for the relief of permanent injunction. it is not maintainable under law. On 14.12.2009, the defendants along with the men and menials attempting to measure the suit property along with some 3rd parties with intend to alienate the same. They also further caused much trouble to the plaintiffs peaceful possession and enjoyment of item II of the suit property. They are having much influence in political and financials. The plaintiffs are not able to tolerate the illegal activities of defendant. Hence, the suit for declaration possession and injunction.

3. Gist of averment in written statement filed by the defendant:-

These defendants are adjacent owner of the property situated on the northern side and Eastern side of the plaintiffs property. These defendants purchased the property through their Power Agent in the year 2005 and they are continuously in peaceful possession and enjoyment of the property without any disturbance from anybody else. These defendants in the year 2007 started to put up barbed wire fence so as to protect any third party to interfere with their property, but the present plaintiffs whose do not have any semblance of right, title and interest over the property started to give lot of pin pricks not only at this suit property, but also the property of the defendants situated at R.S.Puram, Coimbatore. Hence, the defendants in order to protect their rights immediately filed a suit for injunction against these 1st plaintiff and his brother Palanisamy and also on the basis of the documents the 1st Additional District Munsif granted an interim order of injunction and the same is pending presently at 3rd Additional District Munsif Court, Coimbatore. The present plaintiffs who are not the law abiding citizen, started to give lot of troubles by giving false complaint before the police but after investigation, the police found that there is no material to substantiate the claim of the plaintiff and dropped all further proceedings. The 1st plaintiff and Palanisamy tried to disturb possession of these defendant's property and property situated at Coimbatore. It culminated into filing a civil suit in O.S.No.760/2007, which is pending before III Additional District Munsif Court, Coimbatore. The defendants encroached 64 ½ cents of the plaintiff's property is also specifically and emphatically denied. At no point of time, these defendants encroached any property of the plaintiffs at all. The plaintiffs alone are

trying to interfere with these defendants property. Hence, the suit is liable to be dismissed.

4. On considering the plaint and written statement, the following issues were framed, they are:-

1. Whether the plaintiffs are entitled to absolute owners of item I of the suit property?

2. Whether the plaintiffs are entitled to recovery of possession?

3. Whether the plaintiffs are entitled to permanent injunction with respect of altering the physical features of the item I of the suit property?

4. Whether the plaintiffs are entitled to absolute owner of the item II of the suit property?

5. Whether the plaintiffs are entitled to permanent injunction with respect of item II of the suit property?

6. Whether the plaintiffs are entitled to declaration to use and enjoy the cart track in item III of the suit property?

7. Whether the plaintiffs are entitled to mandatory injunction to remove the obstructions in the item III of the suit property?

8. To what other relief is entitled?

5. On the side of the plaintiff, PW.1 and PW.2 examined and ExA.1 to Ex.A.18, Ex.C.1 to Ex.C.3 and Ex.X.1 marked. There is no oral and documentary evidence on the side of defendant.

6. Issues No. 1 and 4:-

Heard learned counsel for plaintiff. The 1st plaintiff examined

himself as PW.1 and narrated the suit property jointly purchased by 1st plaintiff and his brother Palanisamy on 24.08.1977, under Ex.A.1. From the date of purchase, they are in possession and enjoyment of the suit property by mutating revenue records. The patta pass book in the name of 1st plaintiff is Ex.A.3, patta pass book in the name of Palanisamy is Ex.A.4, the joint patta issued to 1st plaintiff and Palanisamy, chitta and adangal extract specifying the possession of 1st plaintiff and Palanisamy is Ex.A.5 to Ex.A.8. They have been in possession by paying Kist to the revenue under Ex.A.9. Meanwhile, the defendants have trespassed into the suit property and cut down the trees, therefore, a police complaint lodged under Ex.A.10 and A.11. They had referred the same as mistake of fact. Against the same, the 1st plaintiff filed protest petition under Ex.A.12 and thereafter, he filed private complaint under Ex.A.13. The defendants filed suit for injunction in respect of suit property before the District Munsif, Coimbatore in O.S.760/2007 under Ex.A.14. It was dismissed for default on 30.07.2014 under Ex.A.15 and A.16. The defendant purchased the eastern side and northern side properties on 07.07.2005 under Ex.A.17. The brother of the 1st plaintiff, namely, Palanisamy bequeathed the suit property in favour of the 2nd plaintiff on 22.03.2004 under Ex.A.18. One of the attesting witness examined as PW.2, who narrated the execution of will in his presence. Relying upon the aforesaid oral and documentary evidence in plaint prayed for declaration and possession in respect of item I of the property, declaration and injunction in respect of item II of the property and declaration of user right and mandatory injunction in respect of item III of the property.

On considering the pleadings, evidences and submissions, the present suit filed stating that the suit item I and II mentioned properties are belonged to the plaintiff as per sale deed dated 24.08.1977, Ex.A.1 and in respect of accessing and enjoying the said property claimed user right through item III mentioned suit cart track. In respect of deciding the right of the plaintiff, initially, it has to be analyzed right and title of plaintiff in suit item I and II mentioned property. On perusal of Ex.A.1, the 1st plaintiff and his brother Palanisamy jointly purchased an extent of 4.42 ½ acres in SF.No. 194 at Arasur Village from one Natarajan. On perusal of recital in Ex.A.1 the boundaries specified as follows:

“க.ச.194 நெம்பர் காலை புஞ்சை ஏ 21.71 க்கு தீர்வை 29.74 இதில் இடத்தில் நடராசன் மேல் பொளியாக தெற்குக் கோட்டில் மந்தைக்கும் வடக்கு கிருஷ்ணகவுண்டர் ஷையார் பூமிக்கும் கிழக்கு, ரங்கசாமிக் கவுண்டர் பங்கு பூமிக்கும் தெற்கு, தென்வடல் பொது வண்டித் தடத்துக்கு மேற்கு இதன் மத்தியில் ஏ. 4.42 ½”

On reading of the aforesaid recital in Ex.A.1, the northern boundary of plaintiff's land is Rangasamy Gounder land, the southern boundary is Mandhai, eastern boundary is south-north common cart-track and the western boundary is Iruasa Gounder land. The plaint schedule of properties specified that the item I mentioned property situated on southern side of Rangasamy Gounder land and northern side of item II of the suit property. On perusal of item II of the plaint schedule property, it is situated on north of Mandhai and south of item I of suit property. This clearly stated item I and II mentioned properties are situated in and between Rangasamy Gounder's land and Mandhai. It is the boundary specified in Ex.A.1. On analyzing the extent of item I property, it specified an extent of Acre 0.64 ½ and the item II mentioned property IT specified an extent of acre 3.78. On totally of both the properties, it have an extent of 4.42 ½ acre. This clearly

specified the item I and II mentioned properties are the properties which were acquired by the 1st plaintiff and Palanisamy on 24.08.1977 under Ex.A.1. On perusal of Ex.A.4 to A.9, from the date of purchase to till the date of filing of suit, the plaintiffs are enjoying the said properties by paying Kist to the Government, raising crops and also mutating revenue records in their name. This clearly establishes the suit item I and II mentioned properties are absolutely belonged to the 1st plaintiff and Palanisamy and they are in possession and enjoyment of the said property since 1977 onwards.

On perusal of Ex.A.18, the said Palanisamy bequeathed his share in such property in favour of 2nd plaintiff on 22.03.2004. On perusal of Ex.A.18, it attested by one Arumugam and Ramasamy. One of the attesting witnesses, namely, Ramasamy examined as PW.2, who narrated that the testator executed WILL in his presence and he signed the WILL with very well sound mind and good mental condition with intention to bequeath the property in favour of the 2nd plaintiff. He also deposed that he attested the will in his presence. This clearly proved the execution of will in favour of 2nd plaintiff under Section 68 of Indian Evidence Act and Section 63 of Indian Succession Act. In pursuance of aforesaid discussion, the share of Palanisamy vested on 2nd plaintiff immediately on demise of Palanisamy by way of WILL. Therefore, the 2nd plaintiff has absolute right in respect of share which belonged to Palanisamy. The aforesaid discussion clearly concluded that the 1st plaintiff and Palanisamy has valid right and title over item I and II mentioned property in view of registered sale deed dated 24.08.1977 Ex.A.1. This court clearly concluded that the right of Palanisamy vested in favour of 2nd plaintiff under Ex.A.18. Therefore, the

plaintiffs have absolute right over the suit schedule item I and II mentioned properties. Accordingly, these issues are answered.

7. Issue No.6:-

Next, it has to be analyzed, 'whether the plaintiffs have user right over the item III for enjoying item I and II mentioned properties'. The suit item III mentioned property is south-north cart-track which is said to be in existence on eastern side of item I and II mentioned properties. On perusal of Ex.A.1, it specified the eastern boundary as south-north common cart-track. This document is related to the period of 1977. The plaintiffs have provided right to use cart-track, which were available for enjoying the said property. It specifically specified in schedule of property as "மாடூல் தடம் வகையறா சகிதம்" . The recital in Ex.A.1 clearly specified that the south-north cart-track was in existence even before 1977 onwards. The plaintiffs have provided right to use said cart-track for accessing and enjoying their property, which was purchased under Ex.A.1. This clearly establishes that the plaintiff has enjoyed the item III mentioned suit cart track since 1977 for accessing their land. As the 3 boundaries of property bounded by private persons property, the plaintiff has only access through such common cart-track. The defendant purchased the property on 07.07.2005 that is after 28 years from the date of purchase of plaintiff's property. On perusal of his title deed Ex.A.17, it has not specified boundaries for properties which was purchased in S.F.No.194. Therefore, the defendant has no right to restrain the enjoyment of suit cart track, which is in continuous enjoyment as cart-track for more than 3 decades. On perusal of the Commissioner Report and Plan Ex.C.1 and Ex.C.2, it is noticed the

item III mentioned cart-track has identified in orange colour. The commissioner plan under Ex.C.3 clearly establishes that the plaintiff has no other access other than item III mentioned cart track. No person has right to encroach the cart track. When the said cart track was in existence for more than decades and the vendors of defendants also utilized the same as cart track, the defendant has no right to dispute the user right of plaintiff through cart track. Hence, this court is of considered view that the item III mentioned property is a north-south cart-track, which is situated on eastern side of suit item I and II mentioned properties. The plaintiff has right to use the said property for enjoying his properties situated in item I and II of the properties. In the absence of item III mentioned suit cart track, the plaintiff could not access his own land. Therefore, the defendants who have land on adjoining the suit property has no authority to restrain or prevent the plaintiff from using such item III mentioned cart track. Accordingly, this issue is answered.

8. Issue No.2:-

The aforesaid discussion in issues no. 1, 4 and 6 clearly establishes that the suit item I mentioned property belonged to the plaintiffs and it also part and parcel of properties purchased under Ex.A.1. In these circumstances, it has to be analyzed, 'whether the plaintiff is entitled possession in respect of item I of the suit property'. This property has specified as the area which was encroached by the defendant on 06.04.2007. In respect of claiming possession along with declaration the plaintiff has limitation for a period of 12 years under Article 65 of Limitation Act. In the present case, the relief of possession claimed as consequential relief of title. Therefore, the plaintiff has limitation of 12

years. But the present suit filed on 08.01.2010 that is very well within 3 years. Therefore, the suit is filed in time. On perusal of Ex.C.1 and C.2, it specified the item I mentioned property to an extent of 0.64 ½ acre is in possession of defendants. On reading of Ex.C.1 it specified as follows:

“5. வட்ட அளவையர் அளந்து கொடுத்த அளவுகளின்படி பச்சை நிறத்தில் காட்டப்பட்டுள்ள தாவா 2 ம் அயிட்ட சொத்துப் பகுதி ஏக் 3.78 கொண்டுள்ளது எனவும், நில நிறப்பகுதியில் உள்ள பூமி அதாவது பிரதிவாதிகளால் ஆக்கிரமிப்பு செய்யப்பட்டதாக வாதிகள் கூறும் முதல் அயிட்ட 0.64 ½ ஏக்கர் கொண்டது எனவும் அளந்து காட்டியுள்ளார். நீல நிறப்பகுதி தாவா முதல் அயிட்ட சொத்து தென்வடலாக இருபுறமும் 14 மீட்டரும், கிழமேல் வடபுறம் 186.4 ம், தென்புறம் 186.6 மீட்டரும் உள்ளதாக அளந்து காட்டியுள்ளார். மேற்சொன்ன நீலநிறப்பகுதியில் டெல்லி கிராஸ் பயிரிடப்பட்டு வளர்ந்த இருந்தது”.

On reading of aforesaid averment the property to an extent of north-south on both sides 14 meter and east-west on northern side by 186.4 meter and south by 186.6 meter is in possession of defendants. This clearly establishes the item I mentioned property is in possession of defendants. The aforesaid discussion clearly establishes that the plaintiffs have title over the said property. Therefore, the defendant has an obligation to deliver possession of such property to the plaintiff. Accordingly this issue is answered.

9. Issue No.7:-

On perusal of Commissioner Report, Ex.C.2., it specified that the item III mentioned cart track has occupied by defendant and it is appeared to be unusable condition. The relevant portion read as follows:

“6. தாவா 1.2 சொத்துக்களுக்குக் கிழபுறம் தாவா 3வது அயிட்டமாக குறிப்பிடப்பட்ட வண்டித்தடம் (மரக்கலரில் குறிப்பிடப்பட்ட பகுதி) இருந்தது. அதன் அகலம் 7.6 மீட்டர். மேற்படி வண்டித்தடத்தின் பெரும்பகுதி பிரதிவாதிகளின் கம்பி வேலிக்குள் அவர்களது ஆக்கிரமிப்புக்குள் இருந்தது. மேலும் மேற்படி வண்டிப்பாதை வாதிகள் பயன்படுத்த முடியாதபடி கம்பிவேலி போடப்பட்டு அடைக்கப்பட்டு இருந்தது. தாவா 1,2 அயிட்ட சொத்துக்களுக்கு வடபுறமாகவும், மேபுறமாகவும் பிரதிவாதிகளின் பூமி இருக்கிறது. தாவா சொத்தின் தென்புற எல்லையில் வேப்ப மரங்களும், கத்தாழைச் செடிகளும் முட்செடிகளும் அடங்கிய உயிர்வேலி இருக்கிறது”.

The aforesaid extracted portion clearly specified that the defendant restrained the plaintiff from enjoying the item III mentioned cart-track by making obstructions in the manner of barbed fence and planting plants. The aforesaid discussion clearly establishes that the plaintiffs have right of access through such suit cart-track and he has user right through such cart track. In these circumstances, the encroachments in such property has to be removed enabling the plaintiff to enjoy his user right peacefully. The person having land adjoining cart-track including defendant has an obligation to maintain such cart-track as it is. They have no right to make any encroachment in such area. The aforesaid discussion clearly establishes the defendant has violated his obligation, therefore, he caused injuries in respect of user right which is available to the plaintiffs through such item III mentioned cart-track. Therefore, the aforesaid barbed fence and other encroachment, which is available in suit item III mentioned cart track is liable to be removed. Hence, this court is of considered view that the plaintiff can entitle mandatory injunction in respect of item III mentioned suit cart track. Accordingly, this issue is answered.

10. Issues No. 3,5 and 8:-

The aforesaid conclusions in issues clearly establishes that the plaintiff has absolute right and title over the suit item 1 and 2 mentioned property, therefore, the plaintiff can entitle injunction restraining the defendants from altering physical features of item 1 mentioned property and restrain defendants from interfering possession of plaintiff in respect of item 2 mentioned property. Accordingly, these issues are answered.

In result this suit is decreed declaring that the plaintiffs are absolute owners of suit item I and II mentioned properties and the plaintiff is entitled to use and enjoy the suit cart track, the item III mentioned property and the defendant is hereby directed to hand over the possession of item I of the suit property to the plaintiff, within three months from this date and granted permanent injunction restraining the defendants, their men, menials, agents, assigns, staffs, works, relations, family members and any other persons acting on behalf of them from in any way interfering the plaintiff's peaceful possession and enjoyment of the item II of the suit property and altering physical features of item 1 of the suit property and granted mandatory injunction directing the defendants to remove obstructions in item III of the suit property within a period of three months from this date. No cost.

Dictated to the Steno-typist, transcribed and typed by her, corrected and pronounced by me in open court this the 24th day of November 2017.

Sd/- Selvi.J.Starli, M.L.
District Munsif,
Sulur.

LIST OF WITNESSES ON PLAINTIFF SIDE:-

PW.1 - Deivasigamani

PW.2 - Ramasamy

LIST OF DOCUMENTS ON PLAINTIFF'S SIDE:-

Ex.A.1	24.08.1977	Sale deed in favour of the 1 st plaintiff and his brother namely Palanisamy	Certified copy
Ex.A.2	09.01.2009	Death certificate of Palanisamy	Original
Ex.A.3	13.06.2002	Patta Pass Book in the name of 1 st plaintiff	Xerox copy
Ex.A.4	17.09.2002	Patta Pass Book in the name of 2 nd plaintiff's father namely deceased Palanisamy	Xerox copy
Ex.A.5	28.08.2009	Computerized patta in the name of 1 st plaintiff (3 Nos.)	Certified copy
Ex.A.6		Computerized Chitta	Certified copy
Ex.A.7		Adangal Extract in the name of 1 st plaintiff	Certified copy
Ex.A.8		Adangal extract in the name of 2 nd plaintiff	Certified copy
Ex.A.9		Kist receipt (14 Nos.)	Original
Ex.A.10	06.04.2007	Complaint given by the 1 st plaintiff to the Sular Police Station	Office copy
Ex.A.11	09.04.2007	Receipt issued by the Sular Police	Xerox copy
Ex.A.12		Objection memo filed by the 1 st Plaintiff to Judicial Magistrate Court, Palladam in C.C.No.272/2007	Xerox copy
Ex.A.13		Private complaint filed by the Plaintiff to Judicial Magistrate Court, Palladam in C.C.No.245/2009	Xerox copy

Ex.A.14		Plaint in O.S.No.760/2007	Xerox copy
Ex.A.15	30.07.2014	Judgment in O.S.No.760/2007	Xerox copy
Ex.A.16	30.07.2014	Decree in O.S.No.760/2007	Xerox copy
Ex.A.17	07.07.2005	Sale deed	Certified copy
Ex.A.18	22.03.2004	WILL	Certified copy

LIST OF WITNESSES AND DOCUMENTS ON DEFENDANTS

SIDE:-

Nil

LIST OF COURT DOCUMENTS:-

- Ex.C.1 - Commissioner Report
 Ex.C.2 - Rough Sketch
 Ex.C.3 - Plan

LIST OF THIRD PARTY DOCUMENT:-

- Ex.X.1 - Voter's Identity Card of PW.2

Sd/- Selvi.J.Starli, M.L.
 District Munsif,
 Sulur.

Draft/Fair/Copy of
 Judgment
 O.S.No.937/2017
 Dated: 24.11.2017
 DMC, Sulur.