

**IN THE COURT OF THE DISTRICT MUNSIF CUM JUDICIAL
MAGISTRATE, ANNUR.**

PRESENT: Tmt.V.Monika, B.A., B.L., L.L.M.,
District Munsif cum Judicial Magistrate,
Annur.

On this Thursday, the 04th day of July, 2024.

I.A.No.2/2023

in

O.S.No.344/2023

(CNR.No.TNCB21-001687-2023)

Mr.N.Ramamoorthy

.... Petitioner/Plaintiff

//Versus//

1. Mrs.Suseela

2. Mrs.Sumathi

3. Mr.N.Ravichandran

4. Mr.C.Jagannathan

5. Mrs.V.Kaliammal

6. Mr.V.Loganathan

7. Mr.V.DevaRajan

....Respondents/Defendants

This petition is coming for final hearing before this court in the presence of Thiru.R.Santhamoorthy, Counsel for the Petitioner/Plaintiff, Thiru. P.Devi Saravanan, Counsel for the Respondents/Defendants 1 to 4, Thiru. K.Vijayan, Counsel for Respondents/Defendants 5 to 7 and upon perusing of material records and having stood over for consideration till this date, this court delivered the following :

ORDER

This petition has been filed by the petitioner/plaintiff U/O 39 Rules 1 and 2 of CPC to pass temporary injunction restraining the respondents herein from in any way preventing the petitioner in using the cart-track passing through the lands in S.F.Nos.407/1, 407/2 of pasur Village in its Eastern extremity as shown in the plaint sketch as ABCDEF to a width of 10 feet and length of 239 feet to reach the suit property in S.F.No.407/3 as described hereunder in the schedule, pending disposal of the above suit and it is also further prayed to grant an order of Ad-interim injunction to the effect of the same till the disposal of the suit.

2. Brief averments of the Petition:

a. The plaintiff is one of the sons of S.Nanjappa Chettiar and grand son of Sevalaya Chettiar. On 20.06.1917, the above said Sevalaya Chettiar and another N.Nanjappa Chettiar purchased lands together in S.F.No. 407 of Pasur Village in Annur vide document number 2663/1917 to the extent of acres 5.15 $\frac{1}{5}$ which is $\frac{4}{5}$ share of total extent of acres 6.44. In between 1917 to 1944, an oral partition took place between N.Nanjappa Chettiar and Sevalaya Chettiar and based on which, the Northern half share of 2.56 acres was allotted to N.Nanjappa Chettiar and Southern half share of 2.56 acres was allotted to Sevalaya Chettiar. Since, the land allotted to Sevalaya Chettiar is abetting to East West Public road, a piece of land at the Eastern end of Northern part was allotted and it is in existence from time immemorial. On

19.04.1968 vide document No.691/1968, the Sevalaya Chettiar and his two sons – Nanjappan and Rangasamy were entered into partition and in which 1.57 acres in S.F.No.407 specified in B schedule was allotted to Nanjappa Chettiar along with another one acre in S.F.No. 407 allotted to Sevalaya Chettiar as a life time maintainance, which was later devolved to his son Nanjappa Chettiar. In the partition deed, there is a recital about a cart track existed in Eastern portion of the lands belonged to Rasi Chettiars (Periya Rasi and Chinna Rasi) in S.F.No. 407. Thus, this petitioner/plaintiff is the owner of entire 2.63 acres of land in S.F.No. 407/3 based on two release deed dated 18.03.2004 and 17.03.2004 executed by his four sisters.

b. The above said N.Nanjappa Chettiar and his two sons – Periyarasi Chettiar and Chinnarasi Chettiar entered into partition on 27.07.1944 vide document no.1296/1944, for the extent of 2.56 acres and in which Chinnarasi Chettiar was allotted B schedule property vested in Northern side, which is situated on South of East West road in S.F.No.409. Since, the properties in A schedule cannot be reached without passing through B schedule property, in that partition deed of the year 1944 itself, there was a recital as to usage of Mamool pathway for A and B schedule property holders. Chinnarasi Chettiar had three sons and two daughters. The defendants 1 and 2 are the legal heirs of deceased son Velappan, defendant 3 is the legal heir of deceased son Nanjappan and Defendant No.4 is the legal heir of deceased son Chinnamuthu. The above three deceased sons of Chinnarasi Chettiar

and his daughters were entered into partition dated 04.03.2015 vide document No.1536/2015, in which Defendants 1 and 2 were allotted with 0.41 cents, Defendant No.3 is allotted with 42 $\frac{1}{4}$ cents and Defendant No.4 was allotted with 43 $\frac{3}{4}$ cents. All these lands were situated in S.F.No.407/1. Since there was a North to South cart track in the portion of Defendant No.4 leading to the share of Periyarasi Chettiar, he was allotted a little higher share than others but that pathway was suppressed in 2015 partition deed. During January 2023 only, the plaintiff had knowledge about concealment of above said pathway in the partition deed. Defendants 5 to 7 were the legal heirs of deceased sons Velusamy and Nanjppan of Periyarasi Chettiar, who were entitled to lands in S.F.No. 407/2.

c. The disputed pathway has been in usage by the predecessors of the petitioner from time immemorial. The respondents 1 to 4 jointly dug a trench during January 2023 to prevent the use of North South cart track by this petitioner, Respondents 5 to 7. This petitioner/plaintiff had purchased a piece of land on 08.05.2023 vide document No. 1785/2023 for the purpose of cart track from this 3rd respondent, the land is situated on Southern side of property belongs to Respondents 5 to 7. This land was purchased after talks between this petitioner and respondents 5 to 7, in order to use that piece of land as a cart track to reach the lands of respondents 5 to 7. Further, from there by passing through their land, the petitioner will enter into his property. Later, respondents 5 to 7 were turned hostile towards the petitioner/plaintiff. Since,

the extent of about acres 5.15 1/5 in S.F.No. 407 is 4/5 share of acres 6.44 is a single tenement and which was partitioned into several parts as stated above by the subsequent years, as per Sec.13 of Easement Act provides a right of way as Easement by Necessity. Hence, this application for temporary injunction as the prima facie case and balance of convenience is in favour of this petitioner, it is prayed by the petitioner to pass an order of temporary injunction against respondent from restraining the petitioner from using the cart track passing through S.F.Nos. 407/1, 407/2 of Pasur Village in Eastern extremity for 10 feet and 239 feet length in order to reach the suit property in S.F.No.407/3 till the disposal of suit.

3 Brief averments in the Counter in Respondents 1 to 4 :

This petition is false, frivolous, vexatious and not maintainable both in law and on facts. The respondents 1 to 4 have denied the allegations specified in para Nos. 1 to 3, para Nos. 4 to 8, para Nos. 9 to 13, para Nos. 14 to 17 by setting out the averments in brief. Further, the plea of the respondents 1 to 4 set out in the counter were that by the partition between Periyarasi Chettiar and Chinnarasi Chettiar on 27.07.1944, an extent of 1.28 acres in S.F.No. 407 with specified boundaries of Pasur Village under B schedule was allotted to Chinnarasi Chettiar, which was sub divided into S.F.No. 407/1. After the death of Chinnarasi Chettiar, his legal heirs partitioned the above S.F.No.407/1 and in which an extent of 0.41 acres with specified boundaries on Western side was allotted to Suseela and Sumathi under C schedule,

central portion of 0.42 ½ acres was allotted to respondent No.3 and 0.43 ¾ acres was allotted to respondent No.4 on the Eastern side by the partition deed dated 04.03.2015. After the partition the above sharers took possession and exclusive enjoyment of their shared properties. Lands in S.F.No's 407/3 belongs to plaintiff and a North South cart track with 9 feet Western extremity in S.F.No.408 runs from North to South, abetting S.F.No.407/1, 2, 3, 4, 5, which was a well beaten cart track meant for usage of lands in S.F.No.407, 408. This cart track in West of S.F.No.408 was used by the petitioner, their predecessors – in – title, Respondents 5 to 7, other land owners of S.F.No.407/4, 5 and 408 from time immemorial and that cart track is 9 feet width. But no cart track with 10 feet was exists in S.F.No.407 as alleged and due to dispute between petitioner and land owners of S.F.No.408, they caused hindrance to use of pathway by the petitioners and so 10 feet cart track was purchased to the extent of 3 cents on 08.02.2023 from 3rd respondent by the petitioner. As per agreement between defendants 5 to 7, the petitioner and respondents 5 to 7 were using the newly purchased land for pathway purpose. Since, there was no North to South cart track on Eastern extremity in S.F.No. 407/1 i.e., with in the lands of these respondents 1 to 4 as alleged, with intention to grab the lands from respondents 1 to 4, the respondent 5 to 7 and the petitioner have colluded together and filed this false suit and petition against these respondent instead of land owners of S.F.No.408, who where necessary party to this suit. Further the plaintiff is having alternative cart track to reach this

property and so he is not entitled for the Easement by Necessity. There was no cause of action as mentioned, this petition is liable to be dismissed with costs.

4. Brief averments in the Counter in Respondents 5 to 7 :

The respondents 1 to 4 have denied the allegations specified the petitioner, by setting out the averments in brief. The defendants never denied the rights of plaintiffs over the suit cart track at any point of time. They further state that from the date of their title documents and that of their predecessors in title, the plaintiffs have been using the suit cart track. In view of the above facts and circumstances there is no need for an injunction as sought for in the plaint. There are no merits in the plaint and the same is liable to be dismissed in limini. There is no cause of action for the suit and the elleged one is cooked up story for the purpose of the case.

5. No witness was examined by both sides. Exhibits P1 to P13 were marked on the petitioner's side. No documents were mark on the Respondent side.

6. Point for Consideration:

Whether this petition u/O.39 Rule 1, 2 of CPC is liable to be allowed and the temporary injunction can be granted to the petitioner as prayed for?

Discussion:

7. Heard the both sides. Documents and the case records perused. The main suit is for declaration of plaintiff's right to use the North South cart track passing through S.F.No.407/1 and 407/2 of Pasur Village with 10 feet width and 239 feet length to reach the suit property of the plaintiff along with consequential injunction from restraining the defendants from preventing the use of cart track.

8. The petitioner and the respondents have obtained their shares from a single tenement after the property went through several partitions. It is alleged by the petitioner that there was a cart track in existence and the same was mentioned in the document – Ex.P2. In this document – Partition deed executed between this petitioner, his father and his brother only the recitals as to the right of driving vehicles and to use the pathway for the lands comprised in S.F.No.407 at the Eastern extremity of the lands belonged to Rasi Chettiars (Periyarasi and Chinnarasi Chettiar) was mentioned. In that recital too, there was no specific mentioning of the length and width of cart track as stated by the petitioner and further more it is the document executed by the petitioner and his father, brother. Apart from this title document, the petitioner was only relying on the registered partition deed – Ex.P5, executed between Periyarasi Chettiar and Chinnarasi Chettiar. But there were no proper or specific details about existence of cart track at the Eastern extremity of the properties belonged to Rasi Chettiars.

9. Apart from the above stated two documents no any other documents were exhibited by the petitioner to show that there is a cart track existed at the Eastern extremity of S.F.No.407/1 and 407/2. From the Ex.P10, the FMB sketch of S.F.No.407, there was no sub division shown on the Eastern extremity of S.F.No.407. By pointing out that FMB, the respondents 1 to 4 counsel have contended that no such pathway as alleged by the petitioner was in existence and so the pathway is not separately subdivided when the whole S.F.No.407 was sub divided into five sub division numbers in S.F.No.407/1, S.F.No.407/2, S.F.No.407/3, S.F.No.407/4 and S.F.No.407/5. When it is pleaded by the respondent counsel by mentioning their plea in counter, that there was alternative pathway existed for reaching the petitioners land, the petitioners never denied the plea that there is an alternative pathway to reach the lands of petitioners.

10. The existence of pathway as alleged by the petitioners were not specifically mentioned in any of the documents relied by him apart from Ex.P2, which was a document executed by the petitioner and his family members. Apart from that, there is no proper document to show about the existence of pathway at the Eastern extremity of S.F.Nos.407/1 and 407/2. When the respondents were denying the existence of cart track and the petitioner sought for the relief of declaration of his right over the pathway, the relief claimed in this petition – temporary injunction against respondent from interfering with the enjoyment of cart track by the petitioner,

which is the consequential relief and can be granted only after determining the right of petitioner over the pathway, only if it is proved to be existed in the suit property. The existence of pathway at Eastern extremity of S.F.No.407/1, 407/2 and the right of petitioner to use the cart track can be decided after examination of witnesses and by exhibiting the documents on both sides at the conclusion of trial. The plea of Easement by Necessity for the benefit of the petitioner can be decided at the time of judgment. Hence, this court is of the opinion that the consequential relief which can be granted after declaration of petitioner's right cannot be granted even before commencement of trial through this interim application.

11. In the result,

this petition is dismissed. No costs.

Dictated to typist and typed by him in my presence and corrected by me and pronounced by me in the open court on this 04th day of July, 2024.

Sd/- V.Monika,
District Munsif cum Judicial Magistrate,
Annur.

List of Exhibits Marked-

On the side of Petitioner:

Ex.P.1	20.06.1917	Sale Deed – Certified Copy.
Ex.P.2	19.04.1968	Partition Deed – Certified Copy.

Ex.P.3	08.03.2004	Release Deed – Certified Copy.
Ex.P.4	17.03.2004	Release Deed – Certified Copy.
Ex.P.5	27.07.1944	Partition Deed – Certified Copy.
Ex.P.6	28.05.2001	Partition Deed – Certified Copy.
Ex.P.7	04.03.2015	Partition Deed – Certified Copy.
Ex.P.8	28.02.2023	Kist Receipts – Original.
Ex.P.9	04.05.2023	Patta No.236 -Online Copy.
Ex.P.10	04.05.2023	FMB Sketch – Online Copy.
Ex.P.11	08.02.2023 -	Sale Deed – Certified Copy.
Ex.P.12	--	Letter of consent executed by the plaintiff & Defendants 6 & 7.
Ex.P.13	--	Chitta Adangal – True Copy.

Respondent side Exhibits : Nil.

Sd/- V.Monika,
District Munsif cum Judicial Magistrate,
Annur.

Fair Order

I.A.2/2023 in

O.S.344/2023

Dated : 04.07.2024

DM cum JM, Annur.

**IN THE COURT OF THE DISTRICT MUNSIF CUM JUDICIAL
MAGISTRATE, ANNUR.**

PRESENT: Tmt.V.Monika, B.A., B.L., L.L.M.,
District Munsif cum Judicial Magistrate,
Annur.

On this Thursday, the 04th day of July, 2024.

I.A.No.2/2023

in

O.S.No.344/2023

(CNR.No.TNCB21-001687-2023)

Mr.N.Ramamoorthy, S/o.Late.Nanjappan Chettiar, aged about 67 years, residing at
D.No.61, Allapalayam, Allapalayam Post, Annur Taluk, Coimbatore – 641 653.

.... Petitioner/Plaintiff

//Versus//

1. Mrs.Suseela, W/o.Viswanathan, aged about 48 years, residing at 178A,
Thimmanaickenpudur, Pongalur Post, Avinashi Taluk, Tiruppur District – 638
459.
2. Mrs.Sumathi, W/o.Sivakumar, aged about 50 years, residing at D.No.34,
Kurukkampalayam, Old Ward No.5, Masakoundenchettipalayam, Coimbatore
– 641 107.
3. Mr.N.Ravichandran, S/o.Late.Nanjappan, aged about 38 years, residing at
D.No.68, Allapalayam, Allapalayam Post, Annur Taluk, Coimbatore – 641 653.
4. Mr.C.Jaganathan, S/o.Late.Chinnamuthu, aged about 35 years, residing at
D.No.5/29, Ammachettipudur, Pasur, Annur Taluk, Coimbatore – 641 653.
5. Mrs.V.Kaliyammal, W/o.Late.Velusamy, aged about 73 years, residing at
D.No.57, Allapalayam, Allapalayam Post, Annur Taluk, Coimbatore – 641 653.

6. Mr.V.Loganathan, S/o.Late.Velusamy, aged about 51 years, residing at D.No.57, Allapalayam, Allapalayam Post, Annur Taluk, Coimbatore – 641 653.
 7. Mr.V.DevaRajan, S/o.Late.Velusamy, aged about 49 years, residing at D.No.57, Allapalayam, Allapalayam Post, Annur Taluk, Coimbatore – 641 653.
-Respondents/Defendants

This petition has been filed by the petitioner/plaintiff U/O 39 Rules 1 and 2 of CPC to pass temporary injunction restraining the respondents herein from in any way preventing the petitioner in using the cart-track passing through the lands in S.F.Nos.407/1, 407/2 of pasur Village in its Eastern extremity as shown in the plaint sketch as ABCDEF to a width of 10 feet and length of 239 feet to reach the suit property in S.F.No.407/3 as described hereunder in the schedule, pending disposal of the above suit and it is also further prayed to grant an order of Ad-interim injunction to the effect of the same till the disposal of the suit.

Date of petition : 03.07.2023.

This petition is coming for final hearing before this court in the presence of Thiru.R.Santhamoorthy, Counsel for the Petitioner/Plaintiff, Thiru. P.Devi Saravanan, Counsel for the Respondents/Defendants 1 to 4, Thiru. K.Vijayan, Counsel for Respondents/Defendants 5 to 7 and upon perusing of material records and having stood over for consideration till this date and this court doth order and final order as follows:

- 1) this petition is dismissed.
- 2) that there shall be no costs.

Memo of Cost

- Both side cost list not filed -

Schedule of Property

கோயம்புத்தூர் ரிடி அன்னூர் சப்ரிடி முன்பு அவினாசி தாலுக்கா தற்காலம் அன்னூர் தாலுக்கா பசர் கிராமம் க.ச.எண்.407/3-ல் புஞ்சை ஏக்.2.63 அளவுள்ள பூமிக்கு செக்குபந்தி விபரம் :

5 முதல் 7 பிரதிவாதிகளுக்கு பாத்தியப்பட்ட

க.ச.எண்.407/2 பூமிக்கும் - தெற்கு;

க.ச.எண்.407/4 பூமிக்கும் - வடக்கு;

க.ச.எண்கள்.406 & 413 பூமிகளுக்கும் - மேற்கு;

க.ச.எண்.408 பூமிக்கும் - மேற்கு;

இதன் மத்தியில், புஞ்சை ஏக்.2.63 பூமி பூராவும். மேற்படி பூமிக்கு உண்டான க.ச.எண்கள்.407/1 & 407/2 பூமிகளில் கிழபுர அரிதியில் தென்வடலாக 10 அடி அகலத்திலும் 239 நீளத்திலும் உள்ள வண்டித் தடபாத்தியம் சகிதம்.

Given under my hand and the seal of this court, this the 04th day of July, 2024.

Sd/- V.Monika,
District Munsif cum Judicial Magistrate,
Annur.

Final Order in :
I.A.2/2023 in
O.S.344/2023
Dated : 04.07.2024.
DM Cum JM, Annur.