

**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 Monday, the 10th day of September, 2024.

I.A.No.2/2023

in

O.S.No.361/2023

(CNR.No.TNCB21-001790-2023)

BeemaBanazer

.... Petitioner/Plaintiff

//Versus//

Shakul Hameed

....Respondent/Defendant

This petition came for final hearing before this court in the presence of the learned Advocate Thiru.K.Sudeesh, Counsel for the Petitioner/Plaintiff and the learned Advocate Thiru.T.Ramakrishnan, Counsel for the Respondent/Defendant 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 grant an order of Ad-interim injunction restraining the respondent, his men and agents from any way interfering with the peaceful possession and enjoyment of the petition mention property also grant and order of injunction till the disposal of this petition and the interest of justice.

2. Brief averments in the Affidavit:

a. The petitioner, in his affidavit, averred that the petitioner and the respondent are husband and wife. The marriage was solemnized on 21.10.2018 at Minhazul Islam Sunnath Jamath Pallivasal and Madhrasa MinhazulHundha situated at Thadagam Road, Kanuvai, Coimbatore, as per Islamic rites and customs and registered before SRO Coimbatore Joint II vide document No.14/2021 dated 29.03.2021 under the Tamilnadu Registration of Marriage Act, 2009. The petitioner purchased the petition mentioned property vide document No.6787/2019 dated 06.05.2019, registered before the Sub Registrar Periyanaickenpalayam. The petitioner obtained a home loan from LIC to purchase the property and till date the petitioner is paying the EMI. The petitioner submitted that, due to matrimonial dispute, she filed a suit against the defendant for dissolution of marriage in OS.No.3/2023 before the Principal Family Court, Coimbatore and so now for the sake of settling the disputes, the defendant demanded the schedule mentioned property to be transferred in his name. On many occasions, whenever the defendant visited Coimbatore he threatened the plaintiff that he would take possession of the property. On 15.06.2023, the defendant entered the suit property along with his hench men and tried to put up a fence around the property to take possession but the petitioner's relatives and her friends thwarted the illegal attempts of the defendant. Unless and until the respondent, their men, agents are restrained by way of an ad-interim injunction from in any way interfering with the petitioner's peaceful possession and enjoyment of the suit property in any manner whatsoever except under due process of law, she will put to great loss and hardship. The petitioner is having prima facie case and balance of convenience. Hence the petition.

3. Brief averments in the Counter statement filed by the Respondents :

The respondent denied each and every line of affidavit. Since there is no cause of action, the suit itself not maintainable and this suit is an abuse process of law. On 03.06.2023, the respondent was asked to appear before the DSP of Periyanaickenpalayam, when the respondent present but the petitioner was not appeared. Again the respondent was asked to appear again on 16.06.2023. In the O.S.No.3/2023 filed by the petitioner before the Family court at Coimbatore, the respondent appeared on 15.06.2023 and remained in the court premises till 04.00PM for filing of written statement and stayed in Coimbatore to attend the Police enquiry on 16.06.2023. From 10.00 AM to 05.00 P.M on 16.06.2023, the petitioner, her mother, the respondent and his counsel were present in the police station and the petitioner withdrawn the complaint against this respondent on that day.

If the respondent disturbed the petitioner's possession of the suit property on 15.06.2023 as stated by the petitioner, she never explained why it was not complained before police or the DSP, Periyanaickenpalayam when both parties were present the next day i.e on 16.06.2023. No material evidences such as photos, video or fencing materials placed before this court but only bald and frivolous oral allegations pleaded. From the pleadings, no prima facie case made out and no balance of convenience, irreparable loss/injury were made out to grant an ad-interim injunction. The petitioner was not approached the court with clean hands. The property was purchased with the funds of the respondent in the name of the petitioner out of love and affection. For purchasing the land in name of the petitioner, the respondent mortgaged his house at Chennai during December 2018 and for which the respondent has paid Rs.19,00,000/- (Rupees Ninety lakhs only).

Every month, the monthly installment of Rs.17,890/- towards that land loan and monthly another Rs.16,000/- were paid by the respondent to the petitioner by cash. Apart from the above pleas, the respondent also stated many facts that happened during the period between the marriage of the petitioner and the respondent and also placed allegations against the family members of the petitioner and prayed to dismiss the petition with exemplary cost.

5. Point for Consideration:

Whether the petitioners are entitled to the relief of temporary injunction as prayed for?

Discussion:

6. The admitted facts by both the parties were, the petitioner/plaintiff and the respondent/defendant is the wife and husband. Due to matrimonial dispute, both of them were presently residing separately and a suit for dissolution of marriage was also pending between the parties before the Hon'ble Family Court, Coimbatore. This suit was filed by the petitioner/plaintiff against her husband, who is the respondent/defendant, seeking the relief of permanent injunction. This interim application was also filed seeking the relief of an ad interim injunction by the petitioner against the respondent by stating that the respondent had attempted to interfere and fence the petition/mentioned property, owned by the petitioner, along with his henchmen.

After considering the nature of the case and other circumstances of the case, at the time of first hearing, this court had already provided an ex-parte ad-interim injunction against the respondent, in favour of the petitioner, that the respondent shall not interfere

with the peaceful possession and enjoyment of the suit property. The ad interim injunction was granted to the petitioner mainly based on the averments made in the petition that on 15.06.2023, the respondent along with his henchmen had attempted to invade in the petition mentioned property, which was purchased by petitioner's own earnings as well as the loan obtained by her. This allegation was challenged by the respondent by submitting that on 15.06.2023, he had been present before the Coimbatore Family Court for the hearing in the matrimonial case between these parties.

During the enquiry, the petitioner exhibited two documents - the online certified copy of the sale deed with respect to suit property and the encumbrance certificate of the same. On the other hand, the respondents exhibited totally six documents - the original summons sent to the respondent through post from the Deputy Superintendent of Police, Periyanaickenpalayam for his appearance on 03.06.2023, as his first document. The second document was the copy of the e-court diary showing that the matrimonial case between the parties were posted on 15.06.2023, which was the date mentioned by the petitioner for the cause of action in this petition as the respondent along with his henchmen attempted to fence the suit property. The third document is the photo of the petitioner, which was claimed by the respondent to be captured on 16.06.2023 during the hearing before the office of the Deputy Superintendent of Police at Periyanaickenpalayam and the same was objected by the petitioner that the place shown in the picture has to be proven by the petitioner. The fourth document exhibited by the respondent was the photo copy of the reply given by the respondent to the Deputy Superintendent of Police at Periyanaickenpalayam dated 16.06.2023. The fifth exhibit filed by the respondent was the caveat petition copies filed by

the petitioner before the Hon'ble Principal Sub-ordinate Judge of Coimbatore and the Hon'ble Principal District Munsif of Coimbatore, both were dated 20.06.2023. The sixth exhibit filed by the respondent was the caveat petition copies filed by the petitioner before the Hon'ble Principal Sub-ordinate Judge of Coimbatore and the Hon'ble Principal District Munsif of Coimbatore, both were dated 23.06.2023.

The petitioner never denied the fact that the family case was posted on 15.06.2023 before the Hon'ble Family Court, Coimbatore. Further the respondent stated that he was present before the above court till 04.00 PM on that day and stayed at Coimbatore for the hearing before the District Superintendent of Police, Periyanaickenpalayam on the following day. The contention that the respondent present before the court on 15.06.2023 till 04.00 PM was not specifically denied by the petitioner during enquiry and it was also not disputed by the petitioner that there were no proceedings taken place on the following day i.e., before the office of District Superintendent of Police, Periyanaickenpalayam. In such circumstances, as contended by the respondents, if any threat to the petition mentioned property by the respondent was taken place on 15.06.2023 as alleged by the petitioner, the petitioner might lodge a complaint before the District Superintendent of Police, Periyanaickenpalayam on 16.05.2023 at the first instance and this suit would only follows later. But no such complaint copy or CSR copy was produced by the petitioner. By these, it collectively shows that the petitioner would not come before this court with clean hands and this court finds that the alleged cause of action for the petition was none other than a clever drafting of the petition but not a reality.

The respondent claimed that the suit property was initially purchased by the down payment made out of his money in the name of the petitioner out of love and affection. But the petitioner claimed that the property was purchased out of her own money. Considering all these facts and circumstances of the petition and the contentions put forth by both the counsels and the case records placed before the court, this court finds that the petitioner lacks prima facie case and the balance of convenience was not found in favour of the petitioner. Hence, the ex parte injunction already granted in favour of the petitioner is vacated and the petition is finally dismissed.

In the result,

This petition is dismissed. No costs.

Dictated to Typist and typed by her in my presence and corrected by me and pronounced by me in the open court on this 10th day of September, 2024.

Sd/-V.Monika,B.A.,B.L.,L.L.M.,
District Munsif cum Judicial Magistrate,
Annur.

List of Exhibits Marked :

Ex.P1	06.05.2019	Sale deed – Certified Copy
Ex.P2	06.07.2023	Encumbrance Certificate.

On the side of Respondents:

Ex.R1	30.05.2023	Notice issued by the DSP, P.N.Palayam
Ex.R2	15.06.2023	Family court proceedings in O.S.No.3/2023.
Ex.R3	-	Photo.
Ex.R4	-	Complainant copy.
Ex.R5	20.06.2023	Caveat petition along with postal cover.
Ex.R6	23.06.2023	Caveat petition along with postal cover.

Sd/-V.Monika,B.A.,B.L.,L.L.M.,
District Munsif cum Judicial Magistrate,
Annur.

Fair/Draft Order

I.A.2/2023 in
O.S.361/2023
Dated : 10.09.2024.
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 Monday, the 10th day of September, 2024.

I.A.No.2/2023
in
O.S.No.361/2023
(CNR.No.TNCB21-001790-2023)

BeemaBanazer, W/o. Shakul Hameed, Muslim aged about 30 years residing at 15,
Edayarpalayam, Masaniamman Nagar, Goundampalayam, Coimbatore.

.... Petitioner/Plaintiff

//Versus//

Shakul Hameed, S/o. AhamedRasik, Muslim, aged about 34 years, residing at D.No.8/12,
Mannady, Mettu Street, George town, Purasaiwalkam Taluk, Chennai.

....Respondent/Defendant

This petition has been filed by the petitioner/plaintiff U/o 39 Rules 1 and 2 of CPC to grant an order of Ad-interim injunction restraining the respondent, his men and agents from any way interfering with the peaceful possession and enjoyment of the petition mention property also grant and order of injunction till the disposal of this petition and the interest of justice.

Date of petition : 11.07.2023

This petition came for final hearing before this court in the presence of the learned Advocate Thiru.K.Sudeesh, Counsel for the Petitioner/Plaintiff and the learned Advocate Thiru.T.Ramakrishnan, Counsel for the Respondent/Defendant 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) that petition is same is here by dismissed.

2) that there shall be no costs.

Memo of Cost

- Both side cost list not filed -

Schedule of Property

கோயமுத்துார் ரிடி, பெரியநாயக்கன்பாளையம் சப்ரிடி, கோயம்புத்துார் தாலுாக்கா, தற்சமயம் அன்னூர் தாலுாக்கா, கீரணத்தம் கிராமம், க.ச.327, நெ.காலை பு.ஏ.16 டி 15. இதில் பு.ஏ.3.80. இதில் ஓர் பாகம் பு.ஏ.2.8-ல் விற்பனை செய்தது நீங்கலாக பு.ஏ.2.62 - 1/2 விஸ்தீரணமுள்ள பூமியை மனையிடங்களாகப் பிரித்துள்ளதில் சயிட் எண்.38-க்கு செக்குப்பந்தி அளவுகள் விபரம்

மருதாசலகவுண்டர் பூமிக்கும்	- வடக்கு
30 அடி தென்வடல் ரோட்டுக்கும்	- தெற்கு
சயிட் எண்.39-க்கும்	- கிழக்கு
சயிட் எண்.37-க்கும்	- மேற்கு

இதன் மத்தியில்,

வடபுறம் கிழமேல்	- 40.0 அடி
தென்புறம் கிழமேல்	- 40.0 அடி
கிழபுறம் தென்வடல்	- 60.0 அடி
மேல்புறம் தென்வடல்	- 60.0 அடி

ஆக இதற்கு 2400 சதுரடிகள் (222.96 சதுரமீட்டர்கள்) அல்லது 5 (ஐந்து) செண்ட்டும் 222 சதுரடிகளும் கொண்ட காலியிடம் சகிதம். மேற்படி காலியிடத்தில் கட்டிடங்கள் எதுவும் இல்லை.

மேற்படி சொத்து தற்கால உட்பிரிவின்படி க.ச.327/2 ந.காலையில் உள்ளது.

மேற்படி சொத்திற்குண்டான மாமூல் ரோடுகளிலும் மேற்படி லே அவுட்டில் விடப்பட்டுள்ள எல்லா ரோடுகளிலும் போக்குவரத்து பொது பாத்தியங்கள் சுகிதம்.

மேற்படி சொத்து கீரணத்தம் கிராம எல்லைக்குட்பட்டது.

Given under my hand and the seal of this court, this the 10th day of September 2024.

Sd/-V.Monika,B.A.,B.L.,L.L.M.,
District Munsif cum Judicial Magistrate,
Annur.

Final Order in :
I.A.2/2023 in
O.S.361/2023
Dated : 10.09.2024
DM cum JM, Annur.