

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
KANCHEEPURAM DISTRICT AT CHENGALPATTU.**

Present : Tmt.J.Mavis Deepika Sundaravadhana, M.A.,M.L.,
Principal District Judge, Chengalpattu.

Monday the 17th day of April 2023

I.A.No.2/2022
in
O.S.No.519/2022

R.Viswanathan . . . Petitioner/Plaintiff.

/Vs/

1. R.Ellammal

2. R.Thiruvengkam

3. R.Gowri

4. R.Jagannathan

5. Yogalakshmi

6. Raja . . . Respondents/Defendants.

This petition came up before me in this court for final hearing on 23.03.2023, in the presence of Thiru.V.Agoram, Advocate for the petitioner and Tvl.K.T.Raghavan and K.S.Abishek, advocates for the respondents, upon hearing the arguments of both side counsel, perusing the entire records and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition is filed by the petitioner under Order 39 Rule 1 and 2 CPC, praying to pass an order of temporary injunction by restraining the respondents/defendants, their men, agents, servants, legal representatives and heirs from in any alienate or encumber the schedule mentioned property to 3rd property till the disposal of the suit and ad-interim injunction till the disposal of this petition.

2. The case of the petitioner in brief :

The petitioner is the son of late Ranganathan and the 1st respondent the respondents 2 and 4 are the sons and 3rd respondent is the daughter of late Ranganathan and 1st respondent. The said Ranganathan was working at Food Corporation of India. The petitioner is a B.Com., ICWA. The 2nd respondent is jobless. The 4th respondent Jaganathan is not a permanent job and he used to go temporary jobs. The petitioner and the respondents are constituted Hindu Joint Family. The petitioner is a hard working person working in various companies after finishing his studies. The petitioner's father G.Ranganathan died during 2004. The item No.1 i.e., survey No.159/1A2 to an extent of Ac.0.05 cents purchased in the name of father G.Ranganathan under sale deed dated 23.6.1977 in document No.1090/1977 and the item No.2 of the suit property i.e., survey No.159/1A1A1A1A1 to an extent of 1411 sq.ft., was also purchased in the

name of G.Ranganathan from Bam ammal and others under sale deed dated 3.1.1994 in document No.1/1994. Out of the income of the father and mostly the petitioner's income, the properties were purchased in the name of the eldest son Thiruvencatam and also some of the properties are purchased in the name of Jagannathan, Yogalakshmi and Raja. The construction was also made, especially in survey No.159/5A a construction of shopping complex had been made by the family. All the properties are developed by the petitioner's hardworking and earning. The respondents managed to get document as if executed by father fraudulently to deprive the petitioner's share as if given the property to him and created a settlement deed dated 23.8.1999 without the knowledge of petitioner in document No.2633/1999 in the name of petitioner. The petitioner was also looking after the health issues of father especially at Appollo Hospital for cancer treatment and three operations were done to his mother, since the family was surrounded from the income of petitioner and his father. Infact survey No.174/12 was also purchased by the family in the name of 5th respondent Raja and the site cost was from the income of the father and the petitioner. The portion in survey No.159/1A2 alone is enjoyed by the petitioner. The other portions are in the said survey number from which the rents have been collected by mother on behalf of the family and they must account for the same. There are also fixed deposit in the name of mother in the Co-operative Bank, Indian Bank and

which are also accountable to the family. The petitioner also entitled share in it. There is also another property i.e., item No.14 with building old Door No.4/376 and new No.2/229 of Sannathi Street, Singaperumal Koil, Chengalpattu taluk i.e., survey No.73/3 to an extent of Ac.0.03 cents, which also fetches rental income. The 2nd respondent was managing the properties but not sharing the profits equally. The properties are all family properties. Hence, the petitioner got equal share along with his mother, brothers and sister. There is a property in the name of the 5th respondent Yogalakshmi i.e., wife of Thiruvencatam in survey No.185/20 of Sengundram is also family property. When the 4th respondent studied college, the property was purchased by the family. Hence, all the properties are purchased by the family out of family income and major share of the petitioner. Now all the respondents joined together to deprive the rightful share of the petitioner. The respondents are formed group and attempting through out of the petitioner from the property on 4.8.2020 and thereafter the respondents are keeping quiet some time. The respondent threatened the petitioner's wife and his children when he was absent. A police complaint also lodged by the petitioner on 16.8.2022. The respondents are taking vengeance of the petitioner, since his demand for partition. In spite of the petitioner given complaint, the respondents also given false complaint against the petitioner and his family and calling the police unnecessarily to his living area which

caused in the eye of the public and it cause very much mental agony to the petitioner and also affecting the studies of the children. The petitioner lastly demanded for partition during 16th August 2022 but the respondents not come for amicable partition of the schedule mentioned properties. On 8th September 2022 when the petitioner was out of station, the respondents locked the main door with bad intention, the petitioner's wife called police and two police man arrived in early morning and opened the door by getting key from the respondents and release the wife and children of the petitioner. The respondents have completely forgotten the contribution made by the petitioner and his father, since they were getting income and they are going against the interest of petitioner. Hence, the petition.

3. The averments of counter filed by the 2nd respondent in brief :

The father of petitioner and respondent worked in Food Corporation of India till his retirement in 1998. Their father died in the year 2004. The averments made about items 1 and 2 of the plaint schedule properties is accepted. The properties mentioned in paragraph 4 of the petition are the self-acquired properties of 2nd respondent and not the joint family properties of their family. Item No.8 of the property listed in the suit schedule is the self-acquired property of the 4th respondent and he is in possession and enjoyment of the property. The properties given under items NO.9 and 10 of the plaint schedule are purchased by the 2nd respondent's

wife Yogalakshmi, the 5th respondent. Item N0.12 of the suit schedule property is the absolute property of the 6th respondent. The 6th respondent is the husband of the 3rd respondent, sister of 2nd respondent. The petitioner never supported their family and their parents were take care of only be the r2nd respondent. Even now, their mother is staying with the 2nd respondent. Since, the mother of the 2nd respondent could not bear the cruelties inflicted on her, she lodged a police complaint against the petitioner and an FIR was lodged against him by the police. The petitioner / plaintiff has been enlarged on bail by the Hon'ble High Court in the said case. It is pertinent to note that most of the properties given in the suit schedule were purchased after the demise of their father in the year 2004. Item No.1 and 2 are the two properties purchased by their father that are available now. Th respondents are not aware of the execution of the settlement deed allegedly executed by their father in favour of the petitioner for the property bearing survey No.177/1B1A3 measuring about 2400 sq.ft. situated at Sengundram Village, Chengalpattu Taluk. It was the self-acquired property of their father and all the respondents are entitled to the share of the property. The petitioner should come forward to take steps to nullify the settlement deed executed without his knowledge, allegedly in the name of their father. The 2nd respondent is unaware of the petitioner's overseas employment details. However, he never shares his income with the family and never cared to take care of their

parent's health. The petitioner alone is disturbing the possession of 2nd respondent's properties and he suppressed many facts and got an injunction against the respondents without any whatsoever right in their properties. The 2nd respondent is regularly assessed for income tax and tax returns are filed periodically. The bank deposits in the Indian Bank and Co-operative Bank are the savings of their mother, the 1st respondent and she is saving them by depositing in the above Banks. It is her investments and the respondents and petitioner have no right over these investments. The petitioner had not discharged his burden to show that the suit properties which stood in the name of the respondents are joint family properties and were purchased from the surplus income yielded from the joint family properties or purchased from his income. Even if there is proof for the existence of a joint family, it does not lead to the presumption that the property owned by any member of the family is common. There is no joint family arrangement and all the respondents live separately and independently. Hence, prayed for dismissal of the petition.

4. The point that arises for consideration is whether the application is liable to be allowed.

5. Point :

This petition is filed under Order 39 Rule 1 and 2 CPC for a temporary injunction not to alienate and encumber the suit property till the

disposal of the suit. The suit is filed for partition and separate possession. The plaintiff is the son of 1st defendant and Late.Ranganathan. The defendants 2 and 4 are the sons of Late.Ranganathan, the 3rd defendant is the daughter of Late.Ranganathan. The 5th defendant is the wife of 2nd defendant. The 6th defendant is the husband of the 3rd defendant. According to the plaintiff the father Late.Ranganathan was working in the Food Corporation of India, the plaintiff is a qualified B.Com., ICWA. According to the plaintiff, he lastly worked in TATA Consultancy, Chennai, thereby he was giving his salary to the family and for the treatment of his father and mother till his marriage.

6. The plaintiff states the suit properties were purchased in the name of members of joint family from the income of the joint family. Plaintiff states that item No.1 and 2 purchased in the name of Late.Ranganathan by a sale deed dated 23.6.1977 and 3.1.1994. The 3rd, 4th, 5th, 6th and 7th item of the properties purchased in the name of Thiruvenkatam, the 2nd defendant by a registered sale deed dated 20.3.1997, 23.8.1999, 9.5.2022, 27.8.2008 and 15.12.2014 respectively.

7. According to the plaintiff the property purchased in the name of 2nd defendant Thiruvenkatam because he is the eldest son in the family. The 8th item of the suit property purchased in the name of 4th defendant Jagannathan by a sale deed dated 15.7.2022. The 9th and 10th item of the property purchased in the name of Yogalakshmi the 5th defendant who is the

wife of the 2nd defendant by a sale deeds dated 21.8.2014, 26.4.2007 respectively.

8. The suit 11th and 12th item of the suit property alleged to be the joint family property, patta stands in the name of 2nd and 6th defendants respectively. According to the plaintiff the properties purchased in the name of Thiruvencatam out of the contribution of the plaintiff's father jointly as a joint family member. The plaintiff states that out of the income of the father and mostly out of the income of the plaintiff the properties purchased in the name of eldest son Thiruvencatam.

9. The plaintiff further submits the item No.13 of the suit property is also joint family property of the plaintiff and the defendants. The plaintiff states that the plaintiff was working in overseas on deputation basis. He further states that he was looking after his father and mother during their hospitalization in the Apollo Hospital.

10. The plaintiff states that there is a building in suit survey No.157/5A where the family is getting income of the Rs.50,000/- per month. It is contended all the family members are equally entitled for the rent. The plaintiff states there is a fixed deposit in the name of plaintiff's mother. There is a building in door No.4/376, Sannathi Street, Singaperumal Koil in which the plaintiffs and the defendants are equally entitled for the rental income.

According to the plaintiff the 2nd defendant is in possession of the property not sharing the income of the property.

11. The plaintiff further states the defendants joined together deprived of the share of the plaintiff formed the group. It is alleged the defendant threatened plaintiff's wife and his children and disturbed the possession of the plaintiff. It is alleged the defendants has given false complaint calling the police unnecessarily. Therefore the suit is filed for partition.

12. In the counter filed by the respondents the averments in the petition is denied. The employment of the father in the Food Corporation of India is admitted. But the contention of the plaintiff that he was contributing the salary to the family is not accepted. The 2nd defendant states that the properties were purchased from his own income and no one has got right in the properties. The possession by the 2nd defendant and the title of the property is admitted by the 2nd defendant.

13. Likewise the item No.8 is claimed to be the property of D4 and item No.9 and 10 claimed to be the property of D5 Yogalakshmi thereby the right claimed by the plaintiff is denied. The property in item No.11 and 12 are claimed to be the absolute property of D6 and it is claimed that it was purchased from the income of D6.

14. The defendants admitted that the properties in item No.1 and 2 stands in the name of father in which they admit plaintiff entitled for share. The learned counsel appearing for the defendants opposed the grant of interim injunction not to alienate contending that it is their self acquired property out of their own income, thereby the plaintiff has no right over the same and argued for vacating the injunction.

15. On the other hand the learned counsel for the plaintiff argued that if they allow to sell the property the suit itself becomes infructuous and there is no meaning in maintaining the suit. Admittedly except item No.1 and 2, the other items of properties stand in the name of D2, D4 and D5. Whether it is a joint family property or a self acquired property has to be decided only at the time of trial.

16. It is true that there is a dispute between the plaintiff and the other family members thereby a police complaint was lodged. The plaintiff also pleaded that when he was absent from the country the defendants lodged a complaint thereby a CSR was registered, thereby his wife and children were threatened. It is contended that only to take vengeance since the plaintiff claimed partition a false police complaint was lodged which is affecting the studies of the children. It is also alleged the defendants have locked the main door and called the police.

17. The police complaint is not denied by the respondent / defendants. It is proved that there is a dispute in the family members. It appears that the dispute is with respect to the properties. Therefore, no prejudice will be caused to the defendants if injunction is made absolute not to alienate or encumber the property till the disposal of the suit. Likewise if injunction is not granted it will lead to multiplicity of proceedings and much hardship will be caused to the petitioner / plaintiff. Therefore petition has to be allowed.

18. As the result, the order of injunction already granted restraining the defendant not to alienate or encumber the suit properties is made absolute till the disposal of the suit. No costs.

Dictated by me to the steno-typist, computerized by her directly, corrected and pronounced by me in open court, on this the 17th day of April 2023.

Principal District Judge,
Chengalpattu.

Both side witnesses and exhibits :
Nil.

Principal District Judge,
Chengalpattu.