

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

PRESENT: Thiru. K. Karthik, M.L.,
District Munsif cum Judicial Magistrate,
Sholinganallur.

Tuesday, the 26th day of November 2024

I.A 1/2024 in

O.S No:580/2024

S. Jeeva,
S/o. Sankaranarayanan

---Petitioner/ Plaintiff

-Versus-

- 1) Mrs. Sharmila,
W/o. Mr. Elangovan
- 2) Mr. Padmanabhan
S/o. Mr. Arumugam

---Respondents/ Defendants

This petition came up for final hearing on 28.10.2024 in the presence of advocate M/s. K. Prasanthan, S.Gnanamoorthy, A.Bhavan Sudhan, M.Naveen Sabari, S.Ajay Sriram and M.Giriprakash counsels appearing for petitioner/plaintiff, M/s. R.Senthil Raj, N.Ganesan, M.J.Sainath, T.Kumaresan and K.Dineshkumar counsels appearing for the respondents/defendants. Upon hearing both side enquiry, perusing relevant records and having stood over the evidence till the day, this court delivering the following;

ORDER

This application has been filed by the petitioner under order, XXXIX Rule 1 & 2 of CPC, to pass an order of ad-interim injunction restraining the respondents/defendants, their men and agents, or any other person or persons acting on their behalf from in any manner interfering with the peaceful possession and enjoyment of the schedule mentioned property in any manner whatsoever, till the pending disposal of above suit and thus render justice.

2. Brief averments of the petitioner in short are as follows:

(i).The counsel for the Petitioner/Plaintiff would submit that the petitioner and plaintiff in the above suit, as such the petitioner/plaintiff well acquainted with fact and circumstances of the above case.

(ii).The counsel for the Petitioner/Plaintiff would submit that the absolute owner of land & building bearing Plot No.22 situated at No.153, S.Kolathur Village, Tambaram Taluk, Chengalpattu District, comprised in Survey No. 371/4 & 6 measuring an extent of 2400 sq.ft., which is more fully described in scheduled hereunder. For sake of brevity hereinafter called as “Schedule Mentioned Property.

(iii).The counsel for the Petitioner/Plaintiff would submit that the petitioner had purchased the schedule mentioned property on 25.06.1998 from Mr. V.S.Puvana Rajeswaran, S/o. Subbaiah Pillai for a sale consideration of Rs.81,600/- (Rupees eighty one thousand and six hundred only) and the same has been registered vide Document No.2005/1998 on the file of Sub-Registrar, Pallavaram. After purchasing the above property the petitioner mutated his name in the revenue records and obtained patta in his name bearing No. 1156 for scheduled mentioned property. Thereafter the petitioner had constructed a small shed measuring an extent of 400 sq.ft and further constructed a small room measuring an extent of 200 sq.ft. in the scheduled mentioned property. Subsequently the petitioner obtained water and electricity connections in his name and have been paying property tax in his name for

the schedule mentioned property till date and the petitioner in absolute possession and enjoyment of subject property ever since the date of purchase of the schedule mentioned property.

(iv).The counsel for the Petitioner/Plaintiff would submit that originally the Schedule mentioned property belong to one Mr. Adhikesava Naicker who has acquired the same by virtue of Partition deed and obtained Patta in his name bearing No. 1004. Mr. Adhikesava Naicker died intestate in the year 1982. Thereafter the legal heirs of Mr. Ardhikesava Naicker sold the Schedule mentioned property to one Mr.A.Ganapathy. Subsequently A.Ganapathy executed a General Power of attorney in favour of M.Shanmugam. On 19/11/1997, M.Shanmugam, the power of Attorney holder of A.Ganapathy executed a sale deed in favour of plaintiffs vendor, Mr. V.S.Puvana Rajeswaran and later she obtained Patta in her name for the scheduled mentioned property.

(v).The counsel for the Petitioner/Plaintiff would submit that out of the blue on 01.05.2024 at around 11.30 am, the respondents and their henchmen trespassed into the schedule mentioned property by breaking the gate lock and started to demolish the compound wall and unearthed the iron gate and further stolen the materials which were inside the room in the Schedule mentioned Property and threatened him to do away. Immediately, the petitioner called police control room 100 and informed the above incident and a complaint has been recorded vide CFS 2144 8949.

(vi).The counsel for the Petitioner/Plaintiff would submit that on the next day (ie., 02.05.2024) the petitioner lodged a complaint before the S7, Madipakkam Police Station and the same has been registered in CSR Bearing No. 470 of 2024. An Inquiry has been conducted by the S7 Madipakkam police in the above complaint, where in order to show the ownership of the property, the petitioner and the respondents were asked to produce documents relating to the schedule mentioned property. The petitioner produced a Xerox copy of all the documents pertaining to the schedule mentioned property. Whereas the respondents have not produced a

single document to show their ownership but using their political influences they refrained the police from registering a case against them.

(vii).The counsel for the Petitioner/Plaintiff would submit that on 09.05.2024 at around 10.00 am. The respondents and their henchmen again entered into the schedule mentioned property and tried to lock the shed and room with their locks. When the petitioner questioned the same, the petitioner was pushed away by the respondent's henchmen and subsequently the petitioner was assaulted by them. The petitioner called the police control room 100 and informed the above incident and the same has been recorded in CFS 2145 2172. But to the petitioner shock and surprise, no police came for his rescue. Later, the petitioner came to know that it was a pre-planned event organized by the respondents with the help of the police officials. Subsequently, the petitioner lodged an online complaint vide reference no.EAJ 24200958 and sent a representation to the Deputy Commissioner of Police regarding the inaction of the police.

(viii).The counsel for the Petitioner/Plaintiff would submit that on daily basis, the respondents and his henchmen started causing trouble to the petitioner peaceful possession of the scheduled mentioned property in order to take illegal possession of the same from him. On account of the above frequent turmoil, the petitioner has suffered huge mental agony and lost his health. As he has been working as a Teacher in Government School, the petitioner wasn't able to go for his job due to the continuous disturbances caused by the respondents.

(ix).The counsel for the Petitioner/Plaintiff would submit that the respondents are politically influenced as they have already influenced the police to refrain from registering the case against them on his earlier complaint, the respondents are capable of doing all sorts of illegal activities to take illegal possession of the schedule mentioned property and to evict him from the suit property and therefore, the petitioner having reasonable apprehension that the respondents will take illegal possession of the schedule mentioned property with force at any point of time. The 2nd respondent threatened the plaintiff of dire consequences. Hence, the petitioner

have no other alternate except approaching this Court by way of the present suit seeking permanent injunction restraining the defendants and their men from any manner interfering with the peaceful possession of the schedule mentioned property Unless the defendants and their men are restrained by an order or judgment of this Court, they will not refrain from their illegal coercive activities. If the defendants are so successful in their illegal attempt, the petitioner would be put to more loss and hardships which cannot be compensated in future.

(x). The counsel for the Petitioner/Plaintiff would submit that the respondents are trying to usurp and grab the schedule mentioned property of the petitioner with an ulterior motive. If the respondents are allowed to take illegal possession of the schedule mentioned property, the petitioner will be curtailed from being the absolute owner of the schedule mentioned property. Hence, the petitioner is filing this interlocutory application for an order of interim injunction.

(x). The counsel for the Petitioner/Plaintiff would submit that ad-interim injunction is not granted this petitioner will be put to great loss and hardship. The balance of convenience is also in favour of the petitioner. On the contrary no prejudice or hardship would be caused to the respondent if injunction granted.

3. Brief averments of the counter filed by the 1st Respondent/ 1st Defendant are as follows:

(i). The counsel for the 1st Respondent/Defendant would submit that the 1st respondent/defendant denies all the allegations and averments set out in the affidavit of the petitioner/plaintiff filed in support of the petition except those that are specifically admitted by her as true and the petitioner/plaintiff is put to strict proof of the same.

(ii). The counsel for the 1st Respondent/Defendant would submit that that the petition is false and vexatious one and that there are no any merits in the petition and

as such the petition is not maintainable either under law or on facts and as such the same is liable to be dismissed in limine.

(iii). The counsel for the 1st Respondent/Defendant would submit that the averments set out in para No.1 of the affidavit of the petitioner are admitted.

(iv). The counsel for the 1st Respondent/Defendant would submit that the averments set out in para No.2 of the petitioner's affidavit that the petitioner/plaintiff is the absolute owner of land & building bearing Plot No. 22 situated at No.153. S. Kolathur Village, Tambaram Taluk, Chengalpattu District, comprised in Survey No. 371/4 & 6 measuring an extent of 2400 sq.ft etc., are not true and correct and as such they are denied by the 1st respondent/defendant.

(v). The counsel for the 1st Respondent/Defendant would submit that the averments set out in para No.3 of the petitioner's affidavit that the petitioner/plaintiff purchased the schedule mentioned property on 25.06.1998 from Mr VS. Puvana Rajeswaran, son of Subbaiah Pillai for a sale consideration of Rs. 81,600/- and the same has been registered Vide Document No. 2005/1998 on the file of Sub-Registrar, Pallavaram and after purchasing the above property he mutated his name in the revenue records and obtained Palta in his name bearing No.1156 for schedule mentioned property and thereafter he had constructed a small shed measuring an extent of 400 sq.ft and further he constructed a small room measuring 200 sq.ft in the schedule mentioned property and subsequently he obtained water and electricity connection in his name and he has been paying property tax in his name for the schedule mentioned property till date he is in absolute possession and enjoyment of subject property ever since the date of purchase of the schedule property are not true and correct and they are denied by the 1st respondent/defendant.

(vi). The counsel for the 1st Respondent/Defendant would submit that the averments set out in para No. 4 of the petitioner's affidavit that originally the schedule mentioned property belongs to one Mr. Adhikesava Naicker who has acquired the same by virtue of Partition deed and obtained Patta in his name bearing No.1004 and Mr. Adhikesava Naicker died intestate in the year 1982 and thereafter the legal heirs

of Mr. Adhikesava Naicker sold the schedule mentioned property to one Mr. A. Ganapathy and subsequently A Ganapathy executed a General Power of Attorney in favour of M. Shanmugam on 19-11-1997 M. Shanmugam the power of Attorney holder of A Ganapathy executed a sale deed in favour of petitioner/plaintiff's vendor Mr. V. S. Puvana Rajeswaran and later she obtained Patta in her name for the schedule mentioned property are not true and correct and they are denied by the 1st respondent/defendant.

(vii). The counsel for the 1st Respondent/Defendant would submit that the allegations made in para No.5 of the petitioner's affidavit that out of the blue on 01-05-2024 at around 1.30 a.m the defendants and their henchmen trespassed into the schedule mentioned property by breaking the gate lock and started to demolish the compound wall and unearthed the iron gate and further stolen the materials which were inside the room in the schedule mentioned property and threatened petitioner/plaintiff to do away and immediately, the petitioner/plaintiff called police control room 100 and informed the above incident and a complaint has been recorded vide CFS 21448949 etc., are nothing but ramification of tissues of falsehood invented by the petitioner/plaintiff to create a ground for the present false and vexatious suit and as such they are stoutly denied by the 1st respondent/defendant.

(viii). The counsel for the 1st Respondent/Defendant would submit that the averments and allegations made in para No. 6 of the petitioner's affidavit filed in support of the petition that on the next day (i.e. 02-05 2024) the petitioner/plaintiff lodged a complaint before the S-7. Madipakkam Police Station and the same has been registered in CSR Bearing No. 470 of 2024 and an inquiry has been conducted by the S7 Madipakkam Police in the above complaint where in order to show the ownership of the property, the petitioner/plaintiff and defendants were asked to produce a Xerox Copy of all the documents pertaining to the schedule mentioned property whereas the defendants have not produced a single document to show their ownership but using their political influence they refrained the police from registering a case against them are not true and correct and they are stoutly denied by the 1st respondent/defendant.

(ix). The counsel for the 1st Respondent/Defendant would submit that the allegations set out in para No. 7 of the petitioner's affidavit that on 09-05-2024 at around 10.00 a.m. the respondents/defendants and their henchmen again entered into the schedule mentioned property and tried to lock the shed and room with their locks and when the petitioner/plaintiff questioned the same, he was pushed away by the the defendants henchmen and subsequently he was assaulted by them and the petitioner/plaintiff called the police control room 100 and informed the above incident and the same has been recorded in CFS21452172 but to his shock and surprise, no police came for his rescue and later he came to know that it was a pre-planned even organized by the defendants with the help of police officials and subsequently the petitioner/plaintiff lodge an online complaint vide reference No. EAJ24200958 and sent representation to the Deputy Commissioner of Police regarding the inaction of the police are not true and correct and they are nothing but a cock and bull story invented by the petitioner plaintiff to create a ground for the present false and vexatious suit and as such they are stoutly denied by the 1st respondent/defendant.

(x). The counsel for the 1st Respondent/Defendant would submit that the allegations set out in para No. 8 of the petitioner's affidavit that on a daily basis, the respondents/defendants and their henchmen started causing trouble to the petitioner/plaintiff's peaceful possession of the schedule property in order to take illegal possession of the same from him and on account of the above frequent turmoil, the petitioner/plaintiff has suffered huge mental agony and lost his health as he has been working as a Teacher in Government School, he was not able to go for his job due to the continuous disturbance caused by the defendants are not true and correct and they are stoutly denied by the 1st respondent/defendant as they do not contain even an iota of truth.

(xi). The counsel for the 1st Respondent/Defendant would submit that the allegations made in para No. 9 of the petitioner's affidavit that the

respondents/defendants are politically influenced as they have already influenced the police to refrain from registering the case against them on his earlier complaint and the defendants are capable of doing all sorts of illegal activities to take illegal possession of the schedule mentioned property and to evict the petitioner/plaintiff from the suit property and therefore, the petitioner/plaintiff is having reasonable apprehension that the defendants will take illegal possession of the schedule mentioned property with force at any point of time and the 1st respondent/defendant threatened the petitioner/plaintiff of dire consequences etc., are not true and correct and they are purposely invented by the petitioner/plaintiff for the purpose of filing the present false and vexatious suit and as such they are stoutly denied by the 1st respondent/defendant.

(xii). The counsel for the 1st Respondent/Defendant would submit that the averments and allegations set out in para No.10 of the petitioner's affidavit that the respondents are trying to usurp and grab the schedule mentioned property of the petitioner with an ulterior motive and if the respondents are allowed to take illegal possession of the schedule mentioned property, the petitioner will be curtailed from being the absolute owner of the schedule mentioned property hence the filing petitioner is filing this interlocutory application for an order of interim injunction are not true and correct and they are nothing but a cock and bull story invented by the petitioner/plaintiff and as such they are stoutly denied by the 1st respondent.

(xiii). The counsel for the 1st Respondent/Defendant would submit that the averments set out in para No.11 of the petitioner's affidavit are not true and correct and they are denied by the 1st respondent.

(xiv). The counsel for the 1st Respondent/Defendant would submit that the apple of discord behind the entire false episode contained in the plaint is that originally the suit schedule property is the self-acquired property of one Late Mr. A. Elangovan who is the husband of the 1st respondent/defendant and younger brother of the 2nd defendant. The 1st respondent/defendant submits that during his life time that on 20-12-1985, her husband Mr A. Elangovan had purchased the suit schedule

property from his vendor Tmt.K.L. Lilly, wife of Mr. KT Cherian by way of a Registered Sale Deed, dated 20-12-1985 bearing Document No. 4182/1985 in the office of the Sub Registrar, Pallavaram and ever since the date of his purchase of the suit schedule property he was in absolute possession and enjoyment of the suit schedule property till the date of his death. The 1st respondent/defendant submits that her Elangovan purchased an extent of 1 Ground and 880 sq.ft 13280 sq.ft).

(xv). The counsel for the 1st Respondent/Defendant would submit that the vendor of her husband namely Tmt.K.I Lilly had purchased the suit schedule property from her vendor one Mr I Chelestine by way of a Registered Sale Deed, dated 04-09-1968 which was registered as Document No. 1725/1968, Book No.1, Volume No.430, pages 147 to 151 in the office of the Sub-Registrar, Pallavaram and ever since the date of her purchase the said K.I. Lilly was in absolute possession and enjoyment of the suit schedule property in her own right.

(xvi). The counsel for the 1st Respondent/Defendant would submit that while so unfortunately that on 24-02-2017 her husband Mr. Elangovan died intestate leaving behind him his wife i.e the 1st respondent/defendant and his childrens as his legal heirs and after his demise the 1st respondent/defendant and her childrens succeeded to the suit schedule property and they have been in absolute possession and enjoyment of the suit schedule property.

(xvii). The counsel for the 1st Respondent/Defendant would submit that her peaceful possession and enjoyment of the suit schedule property became an eye-sore to the petitioner/plaintiff in order to cool down his eye-sore for the last two years, the petitioner/plaintiff started his illegal and unlawful attempts to trespass into the suit schedule property by way of illegal and unlawful attempts to grab the suit schedule property. However, the illegal attempts of the petitioner/plaintiff were restrained by the 1st respondent/defendant at the timely intervention of her neighbours.

(xviii). The counsel for the 1st Respondent/Defendant would submit that when the illegal attempts of the petitioner/plaintiff became know no bounds and as the 1st respondent/defendant was in sunk down heart due to the untimely death of her

husband as she was unable to keep her eyes always wide open to resist the illegal attempts of the petitioner/plaintiff, that on 03-05-2024 she lodged a complaint against the petitioner/plaintiff before S-7, Madipakkam Police Station, Chennai-117 and the said police issued CSR No. 472/2024 and conducted enquiry and at the time of enquiry, the said police asked both the parties to furnish relevant documents to prove their title over the suit property and accordingly the 1st respondent/defendant produced the copy of the sale deed stands in favour of her husband Late Mr. Elangovan and the petitioner/plaintiff asked one week time to furnish the documents stands in his favour and thereafter he did not furnish any documents before the S-7, Madipakkam Police Station and hastily approached this Court with the present false and vexatious suit.

(xix). The counsel for the 1st Respondent/Defendant would submit that on 04.06.2024 the plaintiff came along with his henchmen and started fixing CCTV cameras and fixed iron gate in the suit schedule property, came to know this issues by the 1st defendant she immediately lodged a complaint to the police emergency number, the said police officials asked to come the 1st defendant for enquiry and the plaintiff fixed the iron gate before she immediately left and went to the police station. The 1st defendant submits the police officials and she when asking about the issues to the plaintiff, the plaintiff and his henchmen replied very arrogantly that the plaintiff obtained this court order against the defendants. The concerned S-7, Madippakkam police station issued C.S.R. number 567/2024 for the same incident and still this CSR is pending.

(xx). The counsel for the 1st Respondent/Defendant would submit that there is a clear title and possession in favour of her husband Late Mr Elangovan and his vendor and her predecessors in title from 1966 i.e. more than 58 years. While so, the petitioner/plaintiff approached this Court with sham and concocted documents to establish his title over the suit schedule property to grab the suit schedule property. The 1st respondent/defendant submits that the property alleged to have been purchased by the petitioner/plaintiff may be a different property and in a confused state of mind, the petitioner/plaintiff who does not know even the physical

topography of the suit schedule property approached this Court with the present false and vexatious suit and the schedule shown in the plaint is absolutely different from the property schedule of property purchased by the husband of the 1st respondent/defendant.

(xxi). The counsel for the 1st Respondent/Defendant would submit that it is pertinent to note that when there is a dispute with regard to the title of the property, the petitioner/plaintiff had to file the suit for declaration of title which is comprehensive relief. But now the petitioner/plaintiff approached this Court with the present suit for the relief of permanent injunction with an ulterior motive to evade the payment of the court fee payable by him for the relief of declaration of title.

(xxii). The counsel for the 1st Respondent/Defendant would submit that till today the suit schedule property is being possessed and enjoyed by her The 1st respondent/defendant submits that it is well settled law no injunction can be granted against the person who is in possession. At the outset, the petitioner/plaintiff can't seek the relief of permanent injunction permanent against the 1st respondent/defendant who is in possession and enjoyment of the suit schedule property and on the sole ground the suit is liable to be dismissed.

(xxiii). The counsel for the 1st Respondent/Defendant would submit that there is no cause of action for the petitioner/plaintiff to file the present suit and one alleged in para No. 11 of the plaint is not true and correct and as such the suit is liable to be dismissed as no cause of action.

4. Now, the points for consideration is that whether this petition filed Under Order 39 Rule 1 & 2 of CPC has to be allowed or not?

5. The petition, counter and other materials available on records were carefully perused.

It is pertinent that the main prayer itself is for permanent injunction. While so the real colour can be culled out only after conducting the full fledged trial.

Therefore this court is inclined to dismiss the present interlocutory application before this court with a direction to both parties to strictly adhere with the trial and conclude the same without any Procrastination Accordingly this petition is dismissed. No Cost.

Directly dictated to the Steno-typist, typed by her, corrected and pronounced by me in open court, this the 26th day of November 2024.

PETITIONER AND RESPONDENT SIDE WITNESS AND DOCUMENTS: NIL