

**IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM**

**PRESENT:** Tmt. V. Devapriya, B.Sc.,M.L.,  
District Munsif, Madurantakam

Thursday, the 29<sup>th</sup> day of February, 2024

I.A.No. 4/2023

in

O.S. No. 22/2023

1. P. Balasubramanian
2. P. Arumugam
3. R. Suresh
4. S. Geetha
5. R. Babu
6. V. Elumalai
7. S. Kannan
8. S. Murugan

...Petitioners/Plaintiffs

**-VS-**

1. The Block Development Officer,  
Acharapakkam Panchyat Union  
Acharapakkam
2. The Head Master, Panchayat Union Middle school,  
Theetalam village, Madurantakam Taluk,  
Chengalpattu District.
3. The Assistant Education officer,  
Acharapakkam Panchayat Union,  
Madurantakam Taluk,  
Chengalpattu District.
4. The District Education officer, Elementary Education,  
Chengalpattu .
5. The Tahsildhar, Taluk office, Madurantakam
6. The District Collector, Chengalpattu

...Respondents/Defendants

This petition coming up before me on 21.02.2024 for final hearing in the presence of, Thiru V. Selvakumar, counsel for the Petitioners/Plaintiffs and Thiru.V. Ranganathan, Pleader doing Government work, for Respondents /Defendants and after hearing the arguments on both sides and upon perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

### **ORDER**

This petition has been filed by the Petitioners/Plaintiffs under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, for temporary injunction restraining the Respondents/Defendants their men, agents and servants from in any way putting up construction in the suit 'E' schedule property, till the disposal of the suit.

#### **2.The averments stated in the petition in brief:**

The Petitioners/Plaintiffs had filed the above suit for permanent injunction. The suit 'A' schedule property was originally owned by the 6<sup>th</sup> Petitioner/6<sup>th</sup> Plaintiff and the suit 'B' schedule property was owned by one Raji Gounder, son of Velmayil Gounder. The above said Raji Gounder, son of Velmayil Gounder, died leaving behind the Petitioners 3 to 5/Plaintiffs 3 to 5 as his legal heirs. The suit 'C' schedule property was owned by one Kyilammal, wife of Perumal Gounder and

said Kyilammal died leaving behind the Petitioners 1 and 2/Plaintiffs 1 and 2 as her legal heirs. The suit 'D' schedule property was owned by one Subbaraya Gounder and the said Subbaraya Gounder died leaving behind the Petitioners 7 and 8/Plaintiffs 7 and 8 as his legal heirs. The said Kyilammal, Raji Gounder, Subbaraya Gounder and the 6<sup>th</sup> Plaintiff have been in long possession and enjoyment of their properties for three decades of the obtaining patta. Now the Plaintiffs are in joint possession and enjoyment of the suit 'A' schedule to 'E' schedule properties.

**3.** The suit 'D' schedule and 'E' schedule property are vacant sites as per the revenue records and the Petitioners/Plaintiffs alone are in joint possession and enjoyment of the suit 'D' and 'E' schedule properties, along with the suit 'A' to 'C' schedule properties, as one in rectangle shape. The Respondents/Defendants are attempting to trespass into the suit 'E' schedule property by putting up school building. There is already a school building existing in gramamatham survey No.298/16 and 298/17. Since in the revenue records the suit 'D' and 'E' schedule property are shown as vacant site, taking undue advantage of the same, the Respondents/Defendants are attempting to trespass over the suit 'E' schedule property and are putting up school building by way of forming basement.

**4.** Thereafter the Petitioners/Plaintiffs had given a petition before the 1<sup>st</sup>

Respondent/1<sup>st</sup> Defendant and the 5<sup>th</sup> Respondent/5<sup>th</sup> Defendant. But they have not taken any action to stop the construction by the Respondents 2 to 4/Defendants 2 to 4. On 23.03.2023, the Respondents/Defendants had put up basement in the suit 'E' schedule property. The Respondents/Defendants are all Government Officials and the Petitioners/Plaintiffs have no capacity to fight with the Government Officials.

5. Except the suit properties, the Petitioners/Plaintiffs have no other house site. The Respondents/Defendants have no right to put up construction in the gramanatham property. The Petitioners/Plaintiffs are in possession of the suit 'E' schedule property along with the suit 'A' to 'D' schedule properties. Hence the petition.

6. The appointment of Advocate Commissioner is highly necessary to note down the physical features of the suit properties and also measure the suit properties with the help of Taluk Head Surveyor, Madurantakam. Hence the Plaintiff have filed separate application for appointment of Advocate Commissioner.

**7. The averments stated in the Counter filed the 1<sup>st</sup> Respondent/1<sup>st</sup> Defendant and adopted by Respondents 2 to 6/ Defendants 2 to 6, in brief:**

This petition is not maintainable in law and on facts. The averments stated by the Petitioners/Plaintiffs, are false. The suit 'D' and 'E' schedule properties are vacant site and the Petitioners/Plaintiffs are not in possession and enjoyment of the

same. At the time of granting Gramanatham patta, the suit 'D' and 'E' schedule properties are vacant side and nobody claimed ownership. After granting gramanathma patta till this date no person claimed patta in respect of suit 'D' and 'E' schedule properties. The Government school is running in S.No. 298/16 and 298/17 from the time immemorial. The school students are the suit using the suit 'D' and 'E' schedule property as playground.

**8.** Due to the increasing strength of the student, the localbody sent a representation to Government for allotment of new building for class rooms. The state Government also approved the construction of new building. Thereafter the Village Panchayat of Theetalam Village, passed a resolution on 22.03.2023 in Gramasabha for construction of new class room building in S.No. 298/18, which is the suit 'E' schedule property. The 1<sup>st</sup> Respondent/1<sup>st</sup> Defendant approved the same and offered online tender and the lowest bidder took action for construction. The work order also issued to contractor for construction of new class room building.

**9.** The Petitioners/Plaintiffs are all well aware of the same and had not objected the same. The contractor had started the construction in the suit 'E' schedule property. The Petitioners/Plaintiffs have no title or possession over the suit 'E' schedule property. The Village Panchayat is the necessary party to the proceedings. Hence the petition is bad for non joinder of necessary party. The Respondents 2 to

4/Defendants 2 to 4 are unnecessary parties, to the above suit.

**10.** The suit 'D' and 'E' schedule properties are not in possession and enjoyment of the Petitioners/Plaintiffs. The Respondents/Defendants are not claiming any right in the suit 'A' to 'C' schedule properties. The Petitioners/Plaintiffs, without having any documentary evidence in respect of suit 'D' and 'E' schedule property, had filed a case along with suit 'A' to 'C' schedule properties. The Petitioners/Plaintiffs have no right to file interim application against the Respondents/Defendants for restraining the construction of building in the suit 'E' schedule property. If injunction is granted, the welfare of the students will be affected. There is no prima facie case. Hence this petition is liable to be dismissed with cost.

**11.** The point for determination is whether this petition is to be allowed or not?

**12.** On the side of the Petitioners/Plaintiffs, Exhibits P-1 to P-17 were marked and on the side of the Respondents/Defendants, Exhibits R-1 to R-10 were marked, and no witnesses were examined on both sides.

**13.** Heard both sides and perused the records.

**14.** The Petitioners/Plaintiffs had filed this petition for grant of temporary injunction restraining the Respondents/Defendants from putting up construction in the suit 'E' schedule property, till the disposal of the above suit. The

Respondents/Defendants resisted the petition stating that the Petitioners/Plaintiffs are not in possession of the suit 'E' schedule property.

**15.** The Petitioners/Plaintiffs had stated that the suit 'A', 'B', 'C' and 'D' schedule properties belongs to their ancestors and that they are in joint possession and enjoyment of the suit 'E' schedule properties, along with the above properties. The Exhibit P-1 is related to the suit 'B' schedule property and the Exhibit P-2 is related to the suit 'C' schedule property. The Exhibit P-3 to P-6 prima facie shows that the suit 'E' schedule property does not belong to the Petitioners/Plaintiffs and therefore they had given those petitions for allotting the same to them.

**16.** In the series of Exhibit P-7, all the receipts contain the patta number. Since the suit 'E' schedule property is not the Petitioners/Plaintiffs' patta land, the Exhibit P-7 cannot be related to the suit 'E' schedule property. Admittedly, the suit 'E' schedule property is a vacant land. The same also revealed in Exhibit R-2 and Exhibit P-16. Therefore, the Exhibit P-8 to Exhibit P-11 also cannot be related to the suit 'E' schedule property.

**17.** The Exhibit P-12 to Exhibit P-14 are the sale deeds in favour of one Kariyagounder, S/o. Velayuthagounder. However, there is no pleadings in the petition in respect of the said Kariyagounder. Further, the boundries of the property mentioned in the Exhibits P-12 to P-14 and P-17 and the boundries of the suit 'E'

schedule property, are prima facie not one and the same. Therefore, the Exhibits P-12 to P-14 and P-17 does not prima facie show that it belongs to the suit 'E' schedule property and the merits of those documents can be decided only after trial.

**18.** The Exhibit P-1, Exhibit P-2 and Exhibit R-1 prima facie shows that the some portion of the S.No.84/1, which is the old survey number of the suit properties, belongs to the ancestors of the Petitioners. But, the Petitioners had not produced any document to prima facie show that the suit 'E' schedule property was in their possession for decades.

**19.** The Exhibits R-4 to R-6 and Exhibits R-8 and R-9 prima facie shows the proceedings initiated for constructing class rooms for the Panchayat Union Primary School, Theetalam Village, Acharapakkam Panchayat Union. The Exhibit R-7 prima facie shows that it was resolved to construct the said classrooms in the S.No. 298/18, which is the suit 'E' schedule property and in 298/22. The Exhibit P-15, photos, shows the initial stage of construction. But the photo in Exhibit R-10 shows that the construction has been completed. Thus, in the opinion of this court, this petition becomes infructuous.

**20.** In the judgement filed by the learned counsel for the Respondents/Defendants, in the case of *Dr. M. Thirunavukarasu Vs. Indian Psychiatric Society Tribunal, Rep*



*by its chairman and others, [2008 (2) CTC 51 ]*, the Hon'ble High Court of Madras had held that the interim injunction which has the effect of granting final relief, should not be granted. In the present case, the prayer sought for in the above suit and the interim prayer sought for in this petition, are one and the same. Therefore the above judgement is applicable to the present petition.

**21.** In another judgement filed by the learned counsel for the Respondents/Defendants in the case of *Lalitha and another Vs. Selvaraj [2006 (2) CTC 24]*, the Hon'ble High court of Madras had held that in a suit for injunction, the person seeking injunction has to prove that he is in actual possession of the property. However this petition is filed for grant of temporary injunction wherein, the Petitioners/Plaintiffs has to make out and show prima facie case, balance of convenience in his favour and the irreparable loss. Therefore, proving of possession does not arise at this stage. Hence the above judgement is not applicable in the present petition.

**22.** Hence, for the foregoing reasons, this court is not inclined to allow this petition.

**23. In the result, this petition is dismissed. No costs.**

Partly dictated to the stenographer and typed by him and Partly typed by me in my laptop, corrected and pronounced by me in open court on this the 29<sup>th</sup> day of

February, 2024

Sd/-V. Devapriya  
29.02.2024  
District Munsif  
Madurantakam

**Petitioners side Witnesses:**

Nil

**Petitioners side Exhibits :**

- Ex. P-1 - Notice issued for Patta No.159
- Ex. P-2 - Notice issued for Patta No. 40
- Ex. P-3 - Petition sent by the 6<sup>th</sup> Petitioner/6<sup>th</sup> Plaintiff dated 20.03.2023
- Ex. P-4 - Petition sent by the 3<sup>rd</sup> Petitioner/3<sup>rd</sup> Plaintiff dated 17.03.2023
- Ex. P-5 - Petition sent by the 6<sup>th</sup> Petitioner/6<sup>th</sup> Plaintiff dated 17.03.2023
- Ex. P-6 - Petition sent by the 5<sup>th</sup> Petitioner/5<sup>th</sup> Plaintiff dated 21.03.2023
- Ex. P-7 - Kist receipts (11 Nos.)
- Ex. P-8 - House Tax receipts (5 Nos.)
- Ex. P-9 - Electricity Consumption Card in the name of Perumal Gounder
- Ex. P-10 - Electricity Consumption Card in the name of Raji
- Ex. P-11 - Electricity Consumption bills (2 Nos.)
- Ex. P-12 - Sale deed dated 09.05.1943
- Ex. P-13 - Sale deed dated 31.08.1925
- Ex. P-14 - Sale deed dated 02.03.1923
- Ex. P-15 - Photos (5 Nos.) with CD
- Ex. P-16 - Photos (2 Nos.) with CD
- Ex. P-17 - Encumbrance Certificates

**Respondent side Witnesses :**

Nil

**Respondent side Exhibits :**

- Ex. R-1 - True copy of Chitta Extract
- Ex. R-2 - True copy of Adangal Extract
- Ex. R-3 - True copy of FMB

- Ex. R-4 - Proceedings of the District Collector, Chengalpattu dated 26.12.2022
- Ex. R-5 - True copy of estimate for construction of school building
- Ex. R-6 - True copy of estimate sanction order
- Ex. R-7 - Resolution of Chairman, Theetalam village.
- Ex. R-8 - Letter of Block Development Officer dated 08.02.2023
- Ex. R-9 - Letter of Executive Engineer, District Rural Development office dated 08.02.2023
- Ex. R-10 - Contract Completion Certificate

Sd/-V. Devapriya  
29.02.2024  
District Munsif  
Madurantakam