

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

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

Tuesday, the 13<sup>th</sup> day of December, 2022

I.A.No. 3/2021

in

O.S. No. 33/2021

T. Pichanantham

...Petitioner/Plaintiff

**-vs-**

1. Punitha
2. Dilli Raja

...Respondents/Defendants 1 and 2

This petition coming up before me on 29.11.2022 for final hearing in the presence of, Thiru.R.E.Charles counsel for the Petitioner/Plaintiff and Respondents/ Defendants 1 and 2 having been called absent and set exparte on 10.10.2022 and after hearing the arguments on the Petitioner side 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 Petitioner/ Plaintiff under Order XXXIX Rule 1 and 2 and Section 151 of Code of Civil Procedure, to grant ad-interim injunction restraining the Respondents/Defendants 1 and 2 and their men, agents and servants from any way constructing a septic tank in the suit 'B' schedule property, which is very close to the Well situated in the suit 'A' schedule property, till the disposal of the suit.

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

The Petitioner/Plaintiff had filed the above suit for permanent injunction. The Respondents/Defendants 1 and 2 are making attempt to construct a septic tank in the 'B' schedule property, very close to the Well that is situated in the 'A' schedule property, owned by the Petitioner/Plaintiff. The Respondents/Defendants 1 and 2 are still carrying out their work inspite of the protest by the Petitioner/Plaintiff in person and through the concerned officials. The Petitioner/Plaintiff had prima facie case and the balance of convenience in his favour and if the injunction is not granted, he will suffer irreparable loss and damage. Hence this petition.

3. The Respondents/Defendants 1 and 2 had appeared through their counsel. But they were set ex parte on 12.07.2022 for non-filing of counter.

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

5. On the side of the Petitioner/Plaintiff, Exhibits P-1 to P-12 were marked and on the side of the Respondents/Defendants 1 and 2, no Exhibits were marked, and no witnesses were examined on both sides.

6. Heard the Petitioner side arguments and perused the records.

7. The Petitioner/Plaintiff had filed this petition for grant of ad-interim injunction restraining the Respondents/Defendants 1 and 2 from constructing a septic tank in the suit 'B' schedule property. The Exhibit P-2 and P-10 prima facie shows that the suit

'A' schedule property belongs to the Petitioner/Plaintiff. Exhibit P-1 and P-3 prima facie shows that he is in possession and enjoyment of the same. The Exhibit P-11 shows the plan of the construction of residential building in 'A' schedule property in which the Well is shown in the northern corner of the suit 'A' schedule property. The Exhibit P-8 shows the Well and the under construction septic tank, adjacent to the suit 'A' schedule property. The Advocate Commissioner appointed by this court had filed a preliminary report, in which he had stated that the distance between the Well in the 'A' schedule property and the septic tank in the 'B' schedule property is 12 feet.

8. The learned counsel for the Petitioner/Plaintiff had filed the judgment of the Hon'ble High Court in the case of *S. Kamatchi and others vs G. Saraswathy and another* [S.A.No.459 of 2002 dated 08.09.2010], wherein it was held that as per the section 32 of the Tamil Nadu Public Health Act, the distance between the water source and the septic tank should be minimum 50 feet and that if the distance is within the 50 feet, there is no necessity to analyze whether the septic tank is properly maintained or not. The relied in portion is as follows:

*"23. While considering Section 32 of the Tamil Nadu Public Health Act along with the learned Advocate Commissioner's report and plan, I am of the view that the word "cesspool" is synonymous to the word "septic tank". Further, the appellants / D3 to D9 have never let in any evidence in respect of the maintenance of septic tanks. But as per Section 32 of Tamil Nadu Public Health Act, the distance between the water course and the cesspool should be*

*minimum 50 feet. Admittedly, in this case, the alleged septic tanks are constructed by the then first defendant (deceased) within 50 feet of the Well of the first Respondent/plaintiff and hence, it has to be held that the septic tanks are constructed in violation of Section 32 of the Tamil Nadu Public Health Act. In such circumstances, there is also no necessity to give any finding as to whether the septic tanks have been properly maintained or not, and it is also not necessary to give a finding that if the septic tanks have been properly maintained, it will not affect the Well water."*

9. As per the preliminary report of the Advocate Commissioner, the distance between the Well in the 'A' schedule property and the septic tank in the 'B' schedule property is 12 feet, which is less than the distance prescribed in Tamil Nadu Public Health Act. Hence the above judgment squarely applies to this present case. Hence this court is of the opinion that there is a prima facie case and the balance of convenience is in favour of the Petitioner/Plaintiff and if the interim injunction is not granted, the Petitioner/Plaintiff will suffer irreparable loss. Therefore in the interest of justice, this court is inclined to allow this petition.

10. In the result, this petition is allowed and the Interim Injunction granted on 01.04.2021 is made absolute. No costs.

Dictated to the Stenographer and transcribed by her and corrected and pronounced by me in open court on this the 13<sup>th</sup> day of December, 2022

District Munsif  
Madurantakam

**Petitioner/Plaintiff side witnesses:**

Nil

**Petitioner/Plaintiff side documents:**

- Ex.P-1- House tax receipt
- Ex.P-2- Online patta
- Ex.P-3- Electricity Bill (2 Nos.)
- Ex.P-4- Online patta
- Ex. P-5- Letter to Defendants 3 to 6
- Ex. P-6- Postal receipts
- Ex. P-7- Copy of complaint dated 25.03.2021
- Ex. P-8- Photos with CD
- Ex. P-9- Order of the Deputy Director of Adidravida and Tribal Welfare dated 23.06.1999
- Ex. P-10- Certified copy of Sale Deed dated 01.10.1999
- Ex. P-11- Copy of Plan approval
- Ex. P-12- Letter of the District Collector Kancheepuram dated 18.01.2002

**Respondent/Defendant side witnesses and documents:**

- Nil-

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