

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

PRESENT: Tmt. V.Devapriya, B.Sc., M.L.,
District Munsif, Madurantakam
Friday, the 15th day of November, 2024

I.A.No.2/2023

in

O.S.No.2/2023

G.Vimala

...Petitioner/Plaintiff

-Vs-

Porchilai

...Respondent/Defendant

This petition coming up before me on 24.10.2024 for final hearing in the presence of, Mrs.E.Suriyakala, Mrs.A.Ananthi, counsels for Petitioner/Plaintiff and Thiru.S.Subramanian, counsel for Respondent/Defendant 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 Petitioner/Plaintiff under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, for temporary injunction restraining the Respondent/Defendant, her men, agents, servants, legal representatives and heirs from in any way interfering with the Petitioner/Plaintiff's peaceful possession and enjoyment of the suit property, till the disposal of the suit.

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

The suit property was originally purchased by the Respondent/Defendant from one M.R.Ramakrishna Chettiar, under registered sale deed dated 08.03.2007. The Defendant and her daughter had executed power of attorney deed dated 22.06.2009, in favour of the one Gajendiran S/o.Elumalai. The Petitioner/Plaintiff had purchased the suit property, from the said Gajendiran, the power agent of Respondent/Defendant and her daughter Velvizhi, under sale deed dated 23.12.2010. Therefore the Petitioner/Plaintiff is the absolute owner of the suit property and she is in possession and enjoyment over the suit property.

3. The Petitioner/Plaintiff is paying tax to the Madurantakam Municipality for shops and site purchased by her. After purchase of the property, the Respondent/Defendant had also received the sale amount from her power agent, Gajendiran and had also given receipt dated 25.12.2010 for the sale consideration. The Petitioner/Plaintiff had transferred the revenue records in her favour.

4. The Respondent/Defendant had sold the suit property to the Petitioner/Plaintiff in the year 2010, through her power agent. Therefore, she is no way connected with the suit property. Without any right, the Respondent/Defendant and her henchmen attempted to interfere the Petitioner/Plaintiff's possession over the suit property on 30.12.2022 and the same was successfully prevented by the Petitioner/Plaintiff. The Respondent/Defendant is powerful men and money and she may renew her attempt at any time. Hence this petition.

5. The averments stated in the counter filed by the Respondent/Defendant, in brief:

This petition is not maintainable under law and on facts. The averments in the affidavit are false. The suit property and adjoining property was owned by Iniyan @ Ganesan, the husband of Respondent/Defendant and father of said Velvizhi. The said Iniyan @ Ganesan died intestate leaving behind him the Respondent/Defendant and her daughter. Therefore, the Respondent/Defendant is having only half share in her husband's property.

6. It is admitted that the suit property was purchased by Ramakrishna Chettiar. The Petitioner/Plaintiff and her husband Gajendiran, had not paid the sale consideration and their sale deed is a forged document. The suit property is with the possession of the Respondent/Defendant. The Petitioner/Plaintiff had not added the daughter of Respondent/Defendant as party to the suit. Therefore, the suit is bad for non-joinder of necessary parties. Hence, this petition is liable to be dismissed with costs.

7. The averments stated in the Rejoinder filed by the Petitioner/Plaintiff, in brief:

The Petitioner/Plaintiff is the absolute owner of the suit property. The Respondent/Defendant attempted to interfere the Petitioner/Plaintiff's suit property. Therefore, the Petitioner/Plaintiff had filed the above suit for bare injunction. The allegations in the written statement are false. The Respondent/Defendant and her

daughter had given valid power of attorney to Gajendiran and he sold the same to the Petitioner/Plaintiff.

8. The Respondent/Defendant alone attempted to interfere Petitioner/Plaintiff's possession in the suit property and hence the above suit was filed against the Respondent/Defendant alone. The daughter of the Respondent/Defendant is not necessary party to the suit. After execution of the sale deed, the power given to Gajendiran was cancelled by the Respondent/Defendant. Therefore, the Petitioner/Plaintiff had purchased only part of the property in the total extent of Ac.0.11 cents. Hence, the petition is to be allowed.

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

10. On the side of Petitioner/Plaintiff, Exhibits P1 to P6 marked and on the side of Respondents, no Exhibits were marked and no witnesses were examined on both sides.

11. Heard both sides and perused the records.

12. The Petitioner/Plaintiff had filed this petition for temporary injunction restraining the Respondents/Defendants from interfering her possession in the suit property, till the disposal of the above suit. The Respondents/Defendants resisted the petition stating that the Respondent/Defendant is having only half share in the suit property and that the minor daughter of the Respondent/Defendant is having another half share and therefore, she ought to have been added as party to the above suit.

13. The Petitioner/Plaintiff had stated that the suit property was originally purchased by the Respondent/Defendant for herself and for her minor daughter, from one Ramakrishna Chettiar and that the Respondent/Defendant had executed a power of attorney deed dated 22.06.2009, in favour of the husband of Petitioner/Plaintiff and that he had sold the same to the Petitioner/Plaintiff under sale deed dated 23.12.2010.

14. The Exhibit P-5 prima facie shows that the Respondent/Defendant had purchased the suit property in her name and in the name of her minor daughter. The Exhibit P-3 prima facie shows that the Respondent/Defendant had executed power of attorney on her behalf and on behalf of her minor daughter, in favour of one Gajendran, in respect of the suit property. The Exhibit P-1 is the copy of the sale deed of the Petitioner/Plaintiff, which prima facie shows that the suit property was purchased by the Petitioner/Plaintiff, from the said power of attorney, Gajendran. But, the Exhibit P-2 stands in favour of the Petitioner/Plaintiff, for S.F.No.88/3 and not for suit property.

15. The Respondent/Defendant had alleged that the Petitioner/Plaintiff had not paid the sale consideration to her. The said fact can be decided only after trial, based on the evidences. The Petitioner/Plaintiff had alleged that the Respondent/Defendant is attempting to interfere her possession in the suit property. But the Petitioner/Plaintiff had not stated any facts as to in what way, the Respondent/Defendant is interfering her possession in the suit property. The said fact can also be decided only after trial. The Petitioner/Plaintiff had not shown any prima facie case and balance of

convenience, in her favour and the irreparable loss. Hence for the foregoing reasons, this court is not inclined to allow this petition.

16. In the result, this petition is dismissed. No costs.

Partly dictated to the Stenographer, typed by her and partly typed by me in my laptop, corrected and pronounced by me in open court on this the 15th day of November, 2024.

District Munsif
Madurantakam

Petitioner side witnesses:

NIL

Petitioner side documents:

- Ex P1 - Copy of sale deed dated 23.12.2010
- Ex P2 - Online survey land register extract dated 02.01.2023
- Ex P3 - Copy of power of attorney deed dated 22.06.2009
- Ex P4 - Receipt dated 25.12.2010
- Ex P5 - Copy of sale deed dated 08.03.2007
- Ex P6 - Professional Tax receipts (2 nos.)

Respondent side witnesses & documents:

NIL

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