

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, DINDIGUL.

PRESENT : **THIRU. A.K. MEHBUB ALI KHAN, B.L.M., LL.M.,**
PG.D.PM/IR.,

ADDITIONAL DISTRICT JUDGE, DINDIGUL.

Monday, the 1st Day of July 2024

I.A. Nos.1/2023 & 2/2023

-in-

O. S. 158/2023

I.A. No.1/2023 :

Manjammal

... Petitioner/Plaintiff

-Vs-

1.Bomma Naicker

2.Kannan

3.Ganesan

4. Sakthivel

5.Selvam

... Respondents/defendants

and

I.A. No. 2/2023 :

Manjammal

... Petitioner/Plaintiff

-Vs-

1.Bomma Naicker

2.Kannan

3.Ganesan

4. Sakthivel

5.Selvam

... Respondents/defendants

These two petitions came on 14.06.2024 before this Court for hearing commonly in the presence of Thiru.C.Stanley Manokaran, Advocate for the petitioner in both the I.A Nos.1/2023 and 2/2023 and of Thiru. V.Muthukrishnan, Advocate for the 1st Respondent in both the I.A Nos.1/2023 and 2/2023 and of Thiru.V.Rathinam, Advocate for the Respondents 2 to 5 in both the petitions and on perusal of records this Court delivers the following :

COMMON ORDER

1. Since the facts relevant to decide both the petitions, the parties and the subject matter are common, they are disposed off by this common order.

2. Petition in I.A. No.1 of 2023 is filed by the petitioner/Plaintiff under Order 39, Rules 1 and 2 of Civil Procedure Code praying for an order directing the respondents /defendants not to construct any building in the petition mentioned property by granting interim injunction and temporary injunction till the disposal of this I.A. and the suit.

3. Petition in I.A. No.2 of 2023 is filed by the petitioner/Plaintiff under Order 39, Rules 1 and 2 of Civil Procedure Code praying for an order restraining the respondents /defendants from alienating the petition mentioned property by granting interim injunction and temporary injunction till the disposal of this I.A. and the suit.

4. **Facts relevant for these petitions:**

The petitioner in both the petitions is the plaintiff in the suit. She has filed the suit for partition of her $\frac{1}{2}$ share in the suit properties and also to declare that the sale deeds dated 6.1.1999, 15.2.1999 and partition deed dated 20.7.2011 as null and void and also for injunction not to make any construction and not to alienate the suit properties. It is her contention that the suit properties originally, belonged to Seela Naicker, father of the plaintiff and the 1st defendant Bomma Naicker. The said Seela Naicker died intestate 30 years ago leaving behind the plaintiff and the 1st defendant as the only legal heirs. Thus both are entitled for $\frac{1}{2}$ share each in the suit properties. The suit properties were not divided between the siblings and as such the same were enjoyed as joint family properties till date. Since the 1st defendant was the elder son, the revenue records stood in his name, but the income from the properties were shared by him with the plaintiff every year. She had

stated that some misunderstandings arose between the plaintiff and the 1st defendant since 12.2.2023 and the plaintiff demanded division of her share. A panchayath was convened on 5.3.2023 in the presence of common persons and the plaintiff demanded partition of her ½ share. The 1st defendant though agreed to divide the properties and to give the plaintiff her ½ share, he has not done so. This plaintiff suspicious of the conduct of the 1st defendant, verified the encumbrance on 4.5.2023 and found that he had created documents in the name of Natrayan, father of defendants 2 to 5 on 6.1.1999 and 15.2.1999. These documents are sham and nominal and they would not bind the ½ share of the plaintiff. According to the plaintiff, the said documents are null and void. Further, the said Natrayan had died on 1.12.2007 and these defendants 2 to 5 have created a partition deed on 20.7.2011 suppressing their sisters Malliga, Selvi and Eswari and have divided the properties. The said partition also is not valid since the earlier sale deeds are themselves invalid. Hence, the plaintiff has filed the suit for partition on her ½ share. In the meanwhile, the defendants 2 to 5 had attempted to make constructions in the suit properties, but they were prevented by the plaintiff with the help of neighbours on 8.5.2023. They are also attempting to create encumbrance over the suit properties. Therefore, the petitioner/plaintiff has filed these petitions seeking interim injunction against the respondents 2 to 5

/defendants 2 to 5 restraining them from trespassing into the suit properties and make any constructions in the same till the disposal of the suit. Similarly, she has also prayed for temporary injunction restraining the respondents 2 to 5 from alienating or creating any encumbrances in respect of the suit properties till the disposal of the suit. This plaintiff has claimed that she has Prima facie case and has also chances to succeed in the suit and that the balance of convenience is also in her favour. She has stated that unless the respondents 2 to 5 are prevented by way of temporary injunctions as prayed for, she will be put to irreparable loss and hardships and that no prejudice would be caused to the respondent if interim orders are passed. Therefore she prays to allow both the petitions and grant interim orders.

5. The Respondents 2 to 5 have filed a memo to treat the written statement as the counter for these petitions. They have denied that the suit property belonged to Seela Naicker but they have claimed that the properties belonged to the 1st defendant Bomma Naicker and Ponnari Naicker. It is stated that the plaintiff left the house 55 years ago ignoring the 1st defendant and married a person of her choice and since then there is no contact or any relationship between the plaintiff and the 1st defendant. The plaintiff has not taken any steps to seek partition for the

past 50 years and hence, she is estopped from doing so. The 1st item of the suit property in S.No.1819/1A and S.No.1820/1B totally extending 5 Acres, 97 cents originally belonged to Ponnari Naicker ancestrally. The said Ponnari Naicker and the 1st defendant lived together as a joint family and they had divided the properties orally in the year 1980. The said Ponnari Naicker had alienated the properties alleged to his share in 2004. Similarly, the 1st defendant had sold the properties allotted to his share to the father of these defendants 2 to 5 on 6.1.1999 and 15.2.1999. The remaining portion of the properties are enjoyed by the 1st defendant himself. The plaintiff has to prove that the properties belonged to Seela Naicker and that her predecessors had title over the same. As per the amended Hindu Succession Act, partition could be sought only when there is no registered documents namely partition deed, or sale deed registered earlier to the notified date. In this case, several documents were executed and registered before 12.12.2014 and hence, the plaintiff has lost her right to seek partition. The plaintiff has no documents in her name and she cannot seek any relief in respect of the suit properties. These respondents 2 to 5 have constructed RCC building and are running Tea-shop and Grocery shops in the suit properties since 1999. The properties are not in joint possession of the plaintiff and hence she is not entitled for any relief. The properties are subdivided and are enjoyed by the respondents 2

to 5. The 2nd defendant has filed O.S.No.64/2023 against the 1st defendant, his wife and daughter before the Vendasandur, District Munsif Court in respect of 1087.1/2 Sq.ft in S.No.1819/1B2 seeking the relief of declaration and injunction and the same is pending. The description of property is not correct and the plaintiff has not given the boundaries of the properties or the sub divisions in respect of the suit properties. The 2nd defendant is making constructions in S.No.1819/1B2, for which patta is granted in his name. The plaintiff has not stated which defendant is enjoying the suit properties and that the suit claim is not true, hence the respondents have prayed to dismiss the petitions.

6. The points to be determined in both petitions are :

- 1) Whether the petition in I.A.No.1/2023 be allowed ?
- 2) Whether the petition in I.A.No.2/2023 be allowed ?
- 3) To what other relief are the parties are entitled ?

7. Neither oral nor documentary evidences were adduced by both parties.

8. Answer to Point Nos.1 and 2:

Admittedly, the plaintiff has claimed that she has $\frac{1}{2}$ share in the suit properties. Though no documents are marked in the petitions, she has filed 6

documents along with the plaint. The document Nos. 2 and 3 in the list of documents are the copies of the sale deeds dated 6.1.1999 and 15.2.1999. From the perusal of these two documents, it is found that the said Bomma Naicker has mentioned the suit properties as his ancestral properties and has executed the said sale deeds including his legal heirs. It is not disputed by the respondents /defendants that the plaintiff is the sister of Bomma Naicker or that she is the daughter of Seela Naicker. Hence, when the sale deeds executed by the said Bommi Naicker in favour of defendants 2 to 5 clearly mention that the suit properties are ancestral properties and when the relationship between the parties is not disputed, this Court finds that the plaintiff has a prima facie case for partition.

9. However, whether she is entitled for the relief of partition or not can be decided only at the time of trial and the objections raised by the defendants that the suit property did not belong to Seela Naicker also can be considered only at the time of trial. From the perusal of the records, it is found that the suit properties belonged to Seela Naicker as admitted by the Bomma Naicker himself.

10. It is further to be noted that the respondents have not filed any documents but have claimed that they have made constructions in the suit properties as early

as in the year 1999 and are enjoying the same. Similarly, it is also contended that the 2nd respondent is making constructions in a portion of the property which was purchased and allotted to his share. Even if the claim of the plaintiff is admitted, she has only ½ share in the suit properties and the sale executed by the Bomma Naicker would be binding in respect of his ½ share. Whether such construction is made in the entire property or only in a portion of the property has not been mentioned clearly by the petitioner /plaintiff. Further, if any construction is made, that would be at the risk of the 2nd defendant and if the property is allotted to the share of the plaintiff after trial, he would face the consequences. The rights of the parties can be ascertained based on equity. Therefore, no serious prejudice would be caused to the petitioner if any constructions are made by the 2nd defendant in the suit properties. On the other hand, if construction is stayed, the defendant would be put to serious prejudice and irreparable loss would be caused to him. It can be construed only as an improvement by the co-owner no injunction against him can be granted. Hence, it is held that the petitioner is not entitled for injunction restraining the respondents 2 to 5 /defendants 2 to 5 from making any constructions in the suit properties.

11. However, since the entire property is sold to the respondents 2 to 5 and if they alienate the same or create any encumbrance in respect of the same, it would cause serious prejudice to the petitioner. It would also cause multiplicity of the proceedings. In this regard, the balance of convenience is in favour of the petitioner and if the temporary injunction is not granted restraining the respondents from creating encumbrances in respect of the said properties, serious prejudice and irreparable loss would be caused to the petitioner.

12. Therefore, it is held that the petitioner is entitled for temporary injunction in respect of the prayer relating not to alienate or create encumbrances in respect of the petition mentioned properties.

13. Thus, in view of the discussion made above, it is held that the petitioner is entitled for temporary injunction restraining the respondents 2 to 5 from in any way alienating or creating encumbrance in respect of petition mentioned properties as prayed for in I.A.No.2/2023.

14. At the same time, it is held that the petitioner is not entitled for the relief of temporary injunction in respect of the prayer restraining the respondents 2 to 5

from making any constructions in the petition mentioned properties as prayed for in I.A.No.1/2023. These points are decided accordingly.

15. Answer to point No.3: On considering the peculiar facts and circumstances of the case, the parties are directed to bear their own costs.

In the result, the petition in **I.A.1/2023** is dismissed without cost.

In the result, this petition in **I.A. No.2/2023** is allowed without cost and temporary injunction is granted and the respondents /defendants are hereby restrained from in any way alienating or creating encumbrance in respect of petition mentioned properties till the disposal of the suit.

Dictated to stenographer, taken down and transcribed by her in computer, corrected and pronounced by me in open court on this the 1st day of July 2024.

Additional District Judge,
Dindigul.