

IN THE COURT OF THE ADDITIONAL SUB JUDGE, PALANI

**Present : Thiru. J. Jeya Suthahar, M. Sc., L.L.M.,
Additional Sub Judge, Palani.**

Dated this the 27th day of April 2023 Thursday

I.A.No.3/2023

in

O.S. No.24/2023

D. Jeevanandham

--- Petitioner/Plaintiff

/Vs/

Kanakkanpatty Panchayath

through its President

--- Respondent/4th Defendant

This petition came before me for final hearing on 26.04.2023 in the presence of Mr. Thirumoorthy, Learned Counsel for the Petitioner/Plaintiff and Learned Government Pleader for the Respondent/4th Defendant and upon hearing the arguments on both side and upon perusal of records and having stood over for consideration till this date this court doth delivers the following:

ORDER

This petition is filed by the Petitioner/Plaintiff under Order XXXIX Rule 1, 2 & 3 of CPC for temporary injunction restraining the respondent/4th defendant from interfering with the petitioner's possession and enjoyment of the petition schedule properties till the disposal of the suit.

2. The averments in the petitioner's affidavit filed in support of the petition in brief as follows:

The petitioner is the plaintiff in the suit. The petition schedule properties belonged to the petitioner's father Duraisamygounder ancestrally. He was enjoying the properties by paying kist. The petitioner's father died in the year 1995. His wife

Veerathal and two daughters by name Indurani and Kalaiselvi and a son by name Ramaraj are his legal heirs. After the death of Duraisamygounder they have been enjoying the properties. Thereafter the above said persons executed a release deed in favour of the petitioner on 08.10.2014 and since then the petitioner has been enjoying the petition schedule properties. The old survey number for the property is 31/1 and the new survey number is 727/52. The old door number for the house in the property is 3/11 and the new door number is 3/5. Already a house is there with compound wall. The said house is more than 100 years old. The petitioner has constructed a new house in the place where the old house was situated and constructed compound wall and has been residing there. Patta for the property was issued in the name of the petitioner's father. There is a vacant site on the southern side of the property. Drainage canal was constructed by the Panchayath on the southern side of the petitioner's house. There is no disturbance due to the house of the petitioner and the traffic is also not affected. At the instigation of some persons one Kanagaraj filed a writ petition before the Hon'ble High Court, by stating false averments in W.P. (M.D)No.21110/2018 and the Hon'ble High Court passed an order on 19.01.2022 to take action as per law by giving due notice to the parties and by measuring the properties properly. But without considering the above order a report was filed stating that the 2nd defendant measured the properties and that the petitioner is making encroachment. Without giving any notice to the petitioner and in the absence of the petitioner the measurement was taken by the 2nd defendant which is not acceptable in law. In the meantime the respondent sent a notice to the petitioner on 12.01.2023 stating false averments on the basis of the report given by the 2nd defendant. In the above notice it is stated that the petitioner has to remove the encroachment before

27.01.2023 and that otherwise it will be removed on 30.01.2023 at the expense of the petitioner. The petitioner sent a reply to the respondent by registered post and by courier service. The respondent herein with the help of the defendants 2 and 3 in the suit may demolish the building of the petitioner at any time in an unlawful manner. If they demolish the building the petitioner will be put to great hardship and loss. Hence the petition is filed.

3. The averments in the counter statement filed by the respondent in brief as follows:

All the averments in the petitioner's affidavit are false. The petition is not maintainable in law and on facts. It is liable to be dismissed in limine. One Kanagaraj, S/o. Palanisamy of Kanakkanpatti Village gave a petition to remove the encroachment made by the petitioner in natham S.No.735/18 in Kanakkanpatti Village. In the Village records the natham S.No.735/18 – 0.32.15 ares is recorded as natham puramboke and in the remarks column it is mention as Mandhaikovil. For natham S.No.725/52 – 0.01.81 ares patta is recorded in the name of the petitioner in natham patta No.577. The petitioner is residing there by constructing a house. Natham S.No.735/18 is the Government puramboke land situated on the southern side of the petitioner's house. In the above property there is a compound wall and unfinished old house in an extent of 0.00.20 sq.m and 0.00.41 sq.m respectively by making encroachment. Meanwhile one Kanagaraj filed a writ petition before the Hon'ble Madurai Bench of Madras High Court in WP (M.D) No.21110/2018 and by the order dated 19.09.2022, it is ordered to remove the encroachment in 8 weeks by giving notice to the parties and by giving time. On that basis as per the report of the

surveyor and the revenue inspector by measuring and finding out the encroachment the Block Development Officer, Palani was ordered to remove the encroachment by the proceedings of the Tahsildar, Palani in Na.Ka.No.8094/2018/C2, dated 08.12.2022. On that basis the Panchayath President, Kanakkanpatti issued notice to the petitioner by the notice in OO.Ka.No.2/22, dated 12.01.2023. After the receipt of the notice the petitioner filed writ petition to cancel the notice in WP (M.D) No.1490/23 and WMP (M.D) No.1490/23 and by the order dated 30.01.2023 the Hon'ble High Court has directed the petitioner to give explanation with documents and directed the Panchayath President, Kanakkanpatti to take action in accordance with law. The Panchayath administration has done the work only on the basis of the order of the Hon'ble High court. On that basis it was proposed to measure the property on 11.04.2023 and notice was sent to the petitioner through the Taluk Office, Palani on 01.04.2023. Now the petitioner has stopped the measurements by stating that the suit is pending in respect of the property. Hence another notice was sent to the petitioner on 18.04.2023 to measure the properties on 21.04.2023. When all the officials were present in the disputed property on 21.04.2023, the petitioner is not present. The petitioner did not give co-operation. So measurement was not done. Action was taken to remove the encroachment as per the order of the Hon'ble High Court in the WP (M.D) No.21110/2018, WP (M.D) No.1490/2023 and WMP (M.D) No.1490/2023. The petitioner has filed the suit only to prevent the implementation of the order of the Hon'ble High Court. Hence the petition is liable to be dismissed.

4. Both side no oral evidence is adduced in this petition. On the side of the petitioner Ex.P1 to Ex.P13 were marked as documentary evidence. On the side of the respondent no document was marked.

5. The point for decision in this petition is whether this petition deserves to be allowed or not?

6. Admittedly the petitioner has filed the above suit for bare injunction in respect of the house situated in natham S.No.31/1 (New natham S.No.727/52) in Kanakkanpatti Village. The above petition is filed by the petitioner for temporary injunction restraining the respondent herein who is the 4th defendant in the suit from disturbing the petitioner's possession and enjoyment of the suit properties. The respondent has not objected the possession and enjoyment of the petitioner in the suit property. But according to the respondent action was taken for the removal of encroachment in natham S.No.735/18 in Kanakkanpatti Village as per the order of the Hon'ble High Court in W.P.(M.D) No.21110/2018, dated 19.09.2022 which was filed by one Kanagaraj, S/o. Palanisamy of Kanakkanpatti Village. The respondent has not denied the fact that they are taking steps to remove the encroachment in natham S.No.735/18 of Kanakkanpatti Village. But according to them they are taking action only on the basis of the direction issued by the Hon'ble High Court stated supra. The petitioner has also not denied the above fact. The above order of the Hon'ble High Court in WP (M.D) No.21110/2018, dated 19.09.2022 is marked by the petitioner himself as Ex.P11.

7. At this juncture it is pertinent to note that even the petitioner himself has filed a petition before the Hon'ble High Court in WP (M.D) No.1490/23 and in that petition also the Hon'ble High Court has given a direction to remove the encroachment in the disputed property in accordance with law. The above order copy is also marked by the petitioner himself as Ex.P12. In the above order, the Hon'ble High Court has given a direction as follows.

“5. Considering the fact that the impugned notice, dated 12.01.2023 has been issued without providing an opportunity to the petitioner, as directed by this court in W.P.(MD) No.21110 of 2018, dated 19.09.2022, the impugned notice is treated as show cause notice and the petitioner is directed to file his explanation/objection to the same, placing all the materials in support of his claims before the authority concerned within a period of two weeks from the date of receipt of a copy of this order. On receipt of such explanation/objection, the third respondent is directed to consider the same and pass appropriate orders on merits and in accordance with law, after affording sufficient opportunity to all the parties concerned, within a period of six weeks thereafter. Till such time, the respondents are directed to maintain status-quo as on date.”.

A bare reading of the above order passed by Hon'ble High Court it is seen that the petitioner is directed to furnish explanation and on that basis the respondent is directed to proceed with the action for the removal of encroachment in the property in accordance with law. So it is seen that the dispute involved in this case was already taken cognizance by the Hon'ble High Court. So if the petitioner is having any grievance in respect of the action taken by the respondent regarding the

removal of encroachment he can approach only the Hon'ble High Court for the appropriate remedy and he is not entitled to file the suit and the present petition questioning the encroachment removal drive conducted by the respondent which was done on the basis of the directions issued by the Hon'ble High Court.

8. Hence considering the above facts and circumstances of this case and considering the fact that the dispute involved in the suit was taken cognizance by the Hon'ble High Court and the same is pending in W.P.(M.D) No.No.21110/2018, W.P. (M.D) No.1490/2023 and WMP (M.D) No.1490/2023 before the Hon'ble High Court this court is of the view that the petitioner is not having prima facie case and the balance of inconvenience is also not in favour of the petitioner. Hence this court is of the view that the petition is devoid of merits and the same deserves to be dismissed.

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

Dictated to the the steno-typist directly and computerized and printed by him and pronounced by me in the open court on this the 27th day of April 2023.

**Additional Sub Judge,
Palani.**

Petitioner side witnesses: Nil

Petitioner side documents:

1. Ex.P1 : 08.10.2014 : Copy of the release deed executed by Veerathal in favour of the petitioner.
2. Ex.P2 : 20.08.2014 : Natham Nilavarithitta Thooya Chitta
3. Ex.P3 : 12.01.2023 : Copy of notice sent by the respondent to the petitioner
4. Ex.P4 : 19.01.2023 : Copy of legal notice sent by the petitioner to the respondent
5. Ex.P5 : ---- : AD Card

6. Ex.P6 : 24.07.1989 : House tax receipt
7. Ex.P7 : 19.05.2020 : House tax receipt
8. Ex.P8 : 30.09.2021 : House tax receipt
9. Ex.P9 : ---- : Photos (3 Nos)
10. Ex.P10 : 10.04.2015 : Plan approval
11. Ex.P11 : 19.09.2022 : Copy of the order of the Hon'ble Madurai Bench of Madras High Court in W.P.(MD) No.21110/2018
12. Ex.P12 : 30.01.2023 : Order of the Hon'ble Madurai Bench of Madras High Court in W.P.(MD) No.1490/2023 and W.M.P. (MD) No.1490/2023.
13. Ex.P13 : 13.02.2023 : Copy of the reply Notice sent by the petitioner to the respondent

Respondent side witnesses:Nil

Respondent side documents: Nil

**Additional Sub Judge,
Palani.**

Additional Sub Court, Palani

I .A.No.3/2023

in

O.S.No.24/2023

_____Order

Date : 27.04.2023