



**IN THE COURT OF DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE
NO.01, KODAIKANAL, DINDIGUL DISTRICT**

Present: Thiru. R. ARUN PANDIAN B.A.,B.L.,(Hons). M.L.,
District Munsif cum Judicial Magistrate No.01, Kodaikanal
Wednesday the 11th day of June, 2025.

I.A.No.03 of 2024
In
O.S.No.30 of 2024
(CNR.No.TNDG110008042024)

M.Santhosh Jose ... Petitioner / Plaintiff
/versus/

P.Marimuthu ... Respondent /1st Defendant

This petition is heard in the presence of Mr.A.Mohamed Mydeen the Learned counsel for the Petitioner / Plaintiff and Tmt.N.Manimegai, B.Sc., B.L., the Learned counsel for the Respondent /1st Defendant Enquiry heard on both sides and having stood over for my consideration till this day, this court delivered the following,

ORDER

1. This Petition is preferred by the Petitioner under Order 39 Rule 1 and 2 of the Code of Civil Procedure (In short, 'the Code').

2. The Petitioner is the Plaintiff and the Respondent is the 1st Defendant in the main suit respectively. For the sake of convenience, the parties are referred to as their status in the present petition.

3. The crux of the petition is as follows:

The petitioner Santhos Jose obtained the suit property by registered sale deed by transfer from Mrs. Jaya Siva Davamani in the year 2014. The petitioner accounted to have formed an estate named Santhos Estate in regard the suit property. It accounted by the petitioner that the revenue entries stood mutated in the name of the petitioner, and the revenue tax assessments are made in the name of the petitioner. The factum being so the adjacent land holder namely the respondent who holds the S.No 261/3B, attempted to interfere in the propriety right of the petitioner by laying a pathway in the suit schedule property belonging to the petitioner, during his absence. It was further alleged that the revenue official too acted in aide of the respondent. Further it was alleged that the respondent removed the survey stones and damaged the iron gate and fencing structure installed by the petitioner. Being aggrieved the petitioner has preferred this petition praying to pass an order of temporary injunction restraining the respondent from interfering the possession and enjoyment of the suit property, until the conclusion of the suit

4. The respondent being put on notice sought to adopt the written statement filed in the main suit as counter pertain the petition, and its summarised contention is as follows :

It was asserted by the respondent that the ownership right pertain the suit schedule property as claimed by the petitioner is not denied with. Rather it was placed that, the respondent being an adjacent land holder of the petitioner accounted that the adjacent land S.No 261/3B initially purchased by the respondent's father and on his demise the same devolved on him and his mother. The factum being so it was accounted there runs a "Mamool track" upon the southern edges of the land suit schedule property S.No 260/2 and S.No 264/1 which was used by the respondent to access their land. It was accounted by the respondent that even after the purchase of suit property by the petitioner, the said Mamool track was accounted to be used by the respondent for the period from 2014 to 2023. It was further asserted that the said pathway stands traced to the sale which effected the right

upon the respondent father, with regard the adjacent suit property held by him. Asserting right over the track, the respondents contending factors above the specified, prayed the interlocutory application be dismissed.

5. The point to be decided as to whether the petition is liable to be allowed or not?

6. Therefore, now it has to be seen as to whether the petitioner has established the prima facie case and balance of convenience in his favour and care to be made to see that there should not be a detailed investigation. I am obliged to refer KamalHasaan @ Anr. v. M/s.P.L.Finance and Investment Ltd. and others., 2008-3-L.W. 805, in which the Division Bench of the Hon'ble High Court has emphasized that unless a prima facie case is shown, the parties are not entitled for injunction under Order 39 Rule 1 and 2 CPC. The relevant passage of the said Judgment would run thus:

“Latin expression “Prima facie” means at the first sight or in the first appearance or on the face of it so far as can be judged from the first disclosure. In order to make a prima facie case, the plaintiff must put forth such evidence as in the judgment of law is sufficient to establish the fact and if not rebutted remains sufficient for that purpose. In the instant case, the plaintiffs rested their entire case on the sale deed which was found to be defective as mentioned above. The plaintiffs have got an opportunity to explain away the same at the time of trial by adducing necessary and sufficient evidence. At this juncture, it is pertinent to point out that on the strength of the materials now available, it cannot be held that the plaintiffs have shown to have a prima facie case entitling for interim order of injunction.....”

(Emphasize supplied)

7. The assertion of rights placed by the parties, stands traced back to the determination of right as to the existence of the Mamool track, and if so whether it being a

permissible use or whether it appertains to land annexed to the ownership of the land, it is an aspect which requires elucidation of material facts and evidences. The dispute raised by both parties requires further elucidation. The prima facie aspect of laying of a track by the respondents suddenly in the year 2024 stands enigmatic. The proof of prima facie case and assertion as to encroachment and trespassing pertain to the portion disputed is not sufficiently placed. The aspect namely the non-interference by the court would result in irreparable injury which cannot be adequately compensated in terms of damages as held in **Colgate Palmolive(India) Ltd Vs Hindustan Lever Ltd AIR 1999 SC 3105**, stands unaddressed by the petitioner.

8. Therefore, at this stage, in my considered view, the petitioner could not establish prima facie case in his favour since it requires the assertion as to the right as to the existence of a track. The Ex P1 to P10 appertains to the title documents and revenue record, wherein the title of the petitioner is not disputed by the respondents. Therefore, it would be just and proper if the parties face trial and let in evidence to substantiate their respective stand.

9. This being so, this Court is of the view that at this stage, prima facie case could not be traced out. This court is of the considered view that the debatable issues could be adjudicated only when the parties let in evidence in the trial.

10. It is also expressly made clear that the above observations made by this Court are not on the merits of the case.

Accordingly, the point is answered in negative.

In the result, the petition is dismissed.

Dictated by me to the Steno-Typist directly and typed by him in the lap-top and corrected and pronounced by me in the open court on the 11th day of June 2025.

**District Munsif Cum
Judicial Magistrate No.01,
Kodaikanal.**

Petitioner side witness: Nil

Petitioner side documents:

Ex.P1	Sale deed dated 24.03.2006	Computer out put Certified copy
Ex.P2	Patta in the name of Mrs. Jaya Siva Davamani	Computer put out copy
Ex.P3	Sale deed dated 21.02.2014	Computer out put Certified copy Certified copy
Ex.P4	Patta in the name of the Plaintiff (Patta No.1221)	Computer put out copy
Ex.P5	Patta in the name of the Plaintiff (Patta No.1222)	Computer put out copy
Ex.P6	Kist Receipt (patta No.1221)	Original
Ex.P7	Kist Receipt (patta No.1222)	Original
Ex.P8	CSR Receipt	Original
Ex.P9	Photographs (12 Nos.) with CD with bill	Original
Ex.P10	Encumbrance Certificate	Computer put out copy

Respondents side witnesses and documents: Nil

**District Munsif Cum
Judicial Magistrate No.01,
Kodaikanal.**