

**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
Thursday, the 3rd day of July, 2025.

I.A.No.234 of 2023

In

O.S.No.92 of 2023

Ajith ... Petitioner / Plaintiff

/versus/

AVA.Rajagopal ... Respondent / Defendant

This petition is heard in the presence of Mr.R.Pitchai, the Learned counsel for the Petitioner / Plaintiff and Mr.K.Senthilkumar, the Learned counsel for the Respondent / 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 Petitioners is the Plaintiff and the Respondent is the 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 suit specified property S.No 412/2, was primarily placed belonged to person's namely Sudhi and Saravanan. The suit property was accounted to be purchased by the respondent herein namely AVA.Rajagopal, from the above said persons by mode of registered sale on 27.05.1998. A portion of the said property was in-turn alienated by the respondent in-favour of Chandrasekar, the said acquired property was alienated by Chandrasekar in favour of the petitioner herein on 03.04.2023. The sale deed executed by respondent initially in-favour of Chandrasekar, and the sale deed of Chandrasekar in-favour of the petitioner placed to have, recited in the sale deed that the western wall is a common wall. Disregard of it, the respondent is imputed to trespassed in the suit property and placed to have interfered in the petitioner's proprietary rights. 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 filed memorandum to adopt the written statement filed in the main suit as counter pertain the petition, and its summarised contention is as follows :

It is specified by the respondent, that the assertion as played by the petitioner is not true. The assertion as to the transfer executed in favour of the Chandrasekar, and Chandrasekar in-turn having made a transfer in favour of the petitioner is not denied, but it was accounted that the Chandrasekar alienated only the ground floor, and the respondent placed the right pertain the first floor vested with the respondent. It was accounted that the transferor Chandrasekar has altogether obscured the aspect that the first floor was retained by the respondent, at the time of alienation to the petitioner.Placing

the aspects and describing the basis on which title was acquired, refuting the claim of the petitioner, respondent's herein 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. with regard the interim injunction sought, the petitioner has not clearly pleaded the existence of a specific legal right that is being violated. The petitioner has not substantiated the alleged encroachment by placing any clear demarcation, nor the specific act of trespass clearly placed. On the other hand respondent has raised a serious claim of ownership over the first floor, which directly contradicts the petitioner’s assertion of exclusive possession. Granting an injunction in such scenario, without proper demarcation or prima facie evidence of exclusive possession, would amount to prejudging the issue involved in the main suit. Both claims the possession of the suit property vests with them, a detailed analysis at this stage would run contrary to the principle of a prima facie consideration. The prima facie aspect of exclusive possession stands enigmatic. 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 Liver 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. 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. No Cost.

Dictated by me to the Steno-Typist directly and typed by him in the laptop and corrected and pronounced by me in the open court on the 03rd day of July 2025.

**District Munsif Cum Judicial Magistrate No.1,
Kodaikanal.**