

IN THE COURT OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
DHARMAPURI.

Present: Tmt.U.Monica,M.L.,
Additional District Judge,
Dharmapuri.

Friday, this the 4th day of October 2024

I.A.No.1/2023
in
O.S.No.262/2022

P.Murugesan

...Petitioner/plaintiff

/versus/

1. O.K.S.Kumar

2. R.Ravi

...Respondents/defendants

This petition is coming on 26.9.2024 for final hearing before me in the presence of Thiru.L.Magilan, Advocate for petitioner and Thiru.S.Neelamegam, Advocate for second respondent and first respondent called absent and set exparte and upon hearing both side arguments and on perusal of the entire case records and having stood over till this day, this court pronounced the following:

ORDER

This petition has been filed under Order-39, Rule-1 and section 151 of CPC to grant interim injunction till the disposal of the suit.

2. The case of the petitioner in brief is as follows:

According to petitioner, originally 1.39 cents in S.No.326 and 43 cents in S.No.327 totally 1.82 cents comprising land, well, pump set belonged to Viswanathan, Ranganayaki, Vijayalakshmi, Venkatasubramanian. Viswanathan and

Ranganayaki executed a Power of attorney deed in favour of Srinivasan in respect of 1.19 cents and the above properties were purchased by second defendant by way of Sale deed dated 9.12.2002. The remaining unsold properties in S.No.326 and S.No.327 is 20 cents. The second defendant by way of Sale deed dated 13.7.2009 sold 1.10 1/2 acres in S.No.326 and 0.38 1/2 cents in S.No.327, totally 1.49 acre land, well, pump set, building. The petitioner is in possession and enjoyment of the above properties for the past 13 years. After the death of Viswanathan and Ranganathan, power of attorney executed by them extinguished. Ranganayaki, wife of Ranganathan, daughter Vijayalakshmi and son Venkatasubramanian are legal heirs of Ranganathan. There was a necessity to sell 20 cents of land unsold. As the second defendant was unable to identify the 13 cents, nobody was willing to purchase the sale. Hence the second defendant through his relatives Ranganayaki along with her legal heirs sold 20 cents by way of Sale deed dated 1.8.2011 together with his 13 cents land also to petitioner. Hence the petitioner has purchased 33 cents land and he is in possession and enjoyment of 1.82 acres. The first defendant has no right over the suit properties. The second defendant is attempting to grab the suit properties. The second defendant filed O.S.No.172/2016. When the suit was pending, on 8.7.2022, the second defendant sold 13 cents land to first defendant. The case was not pressed stating that the case was settled out of court, however no settlement was arrived. The first defendant on 27.9.2022 is attempting to encroach the suit properties. The petitioner preferred police complaint, police stated that as the case is pending, only by

way of order of the court action can be taken. Hence the petitioner has filed this petition for temporary injunction restraining the respondents from interfering in his possession or causing damages to the suit properties till the disposal of the suit.

3. The counter filed by the second respondent in brief is as follows:

The total extent in S.No.326 and S.No.327 is 2.55 cents and not 1.82 acres as alleged by petitioner. It is true that second defendant purchased 1.62 acres in the above survey numbers. There is balance of 25 1/2 cents in S.No.326 after selling to second respondent. The petitioner who admits that the first respondent has sold only 1.49 acres, however alleges that he is entitled to the unsold 13 cents belonging to second respondent. S.No.326 and S.No.327 belongs to Viswanathan and Ranganathan, yet, the petitioner has purchased only from legal heirs of Ranganathan and not from the legal heirs of Viswanathan. He has created sale deed in respect of suit property in a forged manner. The sale deed is not a valid one. Patta No.3059 stands in the name of second respondent in respect of 13 cents. He is in possession and enjoyment of the suit property by putting up barbed fence. The petitioner is never in possession, enjoyment of the suit properties and it is his job to grab the properties by threatening others. As the petitioner admitted that he would not interfere with the respondent's possession, so O.S.No.172/2016 was withdrawn. As the petitioner filed this suit, the second respondent sold the property to first respondent on 13.2.2022. The petitioner has no right over the suit property. The petition is liable to be dismissed.

4. The point for consideration:

Whether the petition is liable to be allowed or not?

5. No oral evidence adduced on both side. On the petitioner side Ex.P1 to Ex.P3 were marked. On the second respondent side Ex.R1 to Ex.R4 were marked. Heard both side arguments.

6. Point:

6.1) The petitioner alleges that he has purchased the suit property by way of Sale deed dated 1.8.2011 and is in possession and enjoyment of it and the defendants without any right by creating forged documents are attempting to interfere with the petitioner's possession and enjoyment.

6.2) The second respondent resisted the petition by contending that the petitioner has no right over the suit property and he is in possession and enjoyment of it.

6.3) This is the suit for declaration of title, permanent injunction and to declare the Sale deed dated 8.2.2022 as null and void and for cost. The issues have not yet been framed. At this stage the petitioner has filed this petition.

6.4) The petitioner in order to substantiate his case marked Ex.P1-Certified copy of Sale deed dated 9.12.2002 in the name of second respondent in respect of 1.19 cents in S.No.326 and 0.43 cents in S.No.327, totally 1 acre 49 cents. This document is not denied by the respondents. Ex.P2 is Certified copy of Sale deed dated 9.8.2011 in the name of petitioner executed by second respondent in respect of

1.10 1/2 acres in S.No.326 and 38 1/2 cents in S.No.327. This document is also admitted by respondents. Ex.P3 is Certified copy of Sale deed dated 8.7.2022 executed by second respondent in favour of first respondent in respect of 13 cents.

6.5) The second respondent in order to substantiate his case relied upon Ex.R1-Certified copy of Sale deed dated 9.12.2002 which has been marked as Ex.P1 on the petitioner side. Ex.R2 is Certified copy of Sale deed dated 8.7.2022 which has been marked as Ex.P3 on the side of petitioner. Ex.R3 is Certified copy of Sale deed dated 13.2.2023 executed by second respondent in favour of first respondent in respect of 13 cents. Ex.R4 is Computer patta no.3059 in the name of second respondent in respect of 5.26 ares in S.No.326 and S.No.327.

6.6) It is the case of the petitioner that he purchased the suit property from the legal heirs of Ranganathan by way of Sale deed dated 1.8.2011 and the second respondent also sold his 13 cents through the said document and also received money. As rightly pointed out by second respondent counsel, the petitioner has obtained sale deed only from the legal heirs of Ranganathan and not from Viswanathan and also from second respondent. The second respondent denied the validity and execution of Sale deed dated 1.8.2011. The petitioner though alleged that he is in possession and enjoyment of suit property for the past 13 years, he has not filed any documents to prove his possession in the suit property. Admittedly Ex.R4 patta in respect of suit property is in the name of second respondent. As there is serious title dispute in this case and the petitioner has not proved his possession, by filing any documents, apart

from production of disputed sale deed, it cannot be held that petitioner has got possession over suit property. There are triable issues involve in this case, so injunction cannot be granted at this stage. Prima facie case not made out. The petitioner has not established balance of convenience in his favour and irreparable loss. Hence the petitioner is not entitled to interim injunction as sought for. Hence point for consideration is answered against petitioner.

In the result, the petition is dismissed. In the facts and circumstances of case, both parties are directed to bear their own costs.

Dictated by me, typed by the Steno-typist, corrected and pronounced by me in Open Court on this the 4th day of October 2024.

Additional District Judge,
Dharmapuri.

Petitioner Side Evidence: Nil

Petitioner Side Exhibits:

Ex.P1	9.12.2002	Certified copy of Sale deed in the name of second respondent in respect of 1.19 cents in S.No.326 and 0.43 cents in S.No.327 totally 1 acre .49 cents.
Ex.P2	1.8.2011	Certified copy of Sale deed in the name of petitioner executed by second respondent in respect of 1.10 1/2 acres in S.No.326 and 38 1/2 cents in S.No.327.
Ex.P3	8.7.2022	Certified copy of Sale deed executed by second respondent in favour of first respondent in respect of 13 cents.

Second Respondent Side Evidence: Nil

Second Respondent Side Exhibits:

Ex.R1	9.12.2002	Certified copy of Sale deed in the name of second respondent in respect of 1.19 cents in S.No.326 and 0.43 cents in S.No.327 totally 1 acre .49 cents.
Ex.R2	8.7.2022	Certified copy of Sale deed executed by second respondent in favour of first respondent in respect of 13 cents.
Ex.R3	13.2.2023	Certified copy of Sale deed executed by second respondent in favour of first respondent in respect of 13 cents.
Ex.R4	--	Computer patta no.3059 in the name of second respondent in respect of 5.26 ares in S.No.326 and S.No.327.

Additional District Judge,
Dharmapuri.

Fair Order

I.A.No.1/2023 in

O.S.No.262/2022

Dated:4.10.2024.