

**IN THE COURT OF DISTRICT MUNSIF UTHANGARAI
KRISHNAGIRI DISTRICT**

Present: G. Amar Anand, B.A.LL.B (Hons), LL.M
District Munsif Uthangarai

On this Tuesday, the 29th day of November 2022

I.A.No. 01 of 2021 in O.S.No. 02 of 2021
TNKI13-000111-2020

Venkatesan

...Petitioner / Plaintiff

/versus/

1. Perumal
2. Murugesan
3. Sagadevan

...Respondents / Defendants

This interlocutory application came up before this Court for final hearing on 29.11.2022 in the presence of advocate Thiru. E. Lakshmanan, learned counsel for the petitioners and advocate Thiru. A. Arivuchudar, learned counsel for respondents and upon hearing both sides and on perusal of the case records and having stood over for consideration till date, this Court delivers the following:

ORDER

This application is filed under Order XXXIX Rule 1 and section 151 of the Code of Civil Procedure, 1908, to grant temporary injunction restraining respondents from interfering with the enjoyment of the cart track.

The averments of the petitioner in brief:

1. The petitioner avers that the petitioner has instituted this suit for declaration of easement and perpetual injunction against the respondents. The 2nd scheduled property is owned by the petitioner by way of document 3502/2016 on the file of SRO Uthangarai and the 1st scheduled property owned and enjoyed by the respondents by way of Keelmathur village patta no. 338. The petitioner avers that both the 1st and 2nd scheduled properties originally was owned by the

maternal grandfather of the respondents namely Chinnapaiyan @ Kolandai Makkan. The petitioner avers that after his demise, the 1st scheduled property was in possession and enjoyment of the mother of the respondents namely Periyathai and after her demise, the patta was mutated in the name of the respondents and patta no. 338 was issued accordingly and the respondents are in possession and enjoyment. The petitioner avers that the 2nd schedule property was originally purchased by the grandfather of the petitioner namely Thiruvengada Gounder and after his demise the property was owned and possessed by the father of the petitioner namely Jeyaraman by way of Kelmathur village patta no. 40 and that after 28.09.2016, the petitioner has been in possession and enjoyment of the property by way of settlement deed 3502/2016 acquired from the petitioner's father and also obtained patta no. 1049.

2. The petitioner avers that from the date of purchase of the 2nd schedule property by the grandfather of the petitioner about 60 years ago, the 2nd scheduled property was accessed for residence and agriculture through the 1st scheduled property by using a 12 feet wide cart track shown as ABCD in the rough sketch and the said cart track is also used by the respondents. The petitioner avers that there is no way other than the said cart track to access the 2nd schedule property and avers that the petitioner was in enjoyment of the said cart track from the day of settlement deed for residence, agriculture by tractor, lorry and cattle farming. The petitioner avers that the petitioner is in business of water supply by water tractor to houses and farms and had been supplying to the respondents' house and for about 1 year ago, when the petitioner was unable to supply water to the respondents house when the respondents, the respondent restrained the petitioner from using the cart track and amicable talks were undertaken before public and respondents agreed not to disturb the enjoyment of the cart track and did not restrain afterwards. However, in October 2020, the respondents demanded to supply water to their house for once in a week and the petitioner has refused and

in retaliation to it, the respondents on 01.11.2020 in order to disturb the enjoyment raised the land using JCB and the petitioner avers that the petitioner has been in hardship to access the house and farm and has now been walking through the ridge by parking the two wheeler and tractor in other houses of known persons. Hence, the petitioner has filed this suit for declaration of easement by necessity of the 12 feet wide cart track in the 1st schedule property to access the 2nd schedule property. The petitioner avers, hence, it is just and proper to grant temporary injunction in favour of the petitioner restraining respondents from interfering with the enjoyment of the cart track.

The averments of the respondent in brief:

3. The respondent avers that the property in S.No. 125/4D which is owned and enjoyed jointly by the respondents by way of Keelmathur patta no. 338 after the demise of the mother of the respondents namely Periyathayammal and the petitioner is put to strict proof of the rest of the averments. The respondents aver that the petitioner was at no point of time in enjoyment of any of the 1st schedule property and it is false to state that the 2nd schedule property is originally owned by Thiruvengada Gounder and respondents came to know that 2nd schedule property was enjoyed by Jeyaraman by way of village patta no. 40 and, after his demise, by the petitioner by settlement deed 3502/2016, only after filing of this petition. The respondents deny the averments of the petitioner on existence of the cart track in the 1st schedule property and usage of the cart track by the petitioner and the alleged interference of the respondents by raising land by JCB. The respondents avers that the respondents, in a small part of the property in S.No. 125/4D, have build a house and cultivating rest of the vacant land with a well within it and have made borewell in other properties of the respondents and have been using the water for cultivation. The respondents aver that there is no necessity for the respondents to demand water from the petitioner and petitioner has falsely stated the facts for this frivolous petition and there is no cart track as

averred by the petitioner. The petitioner has not averred the place in which the respondents have alleged interfered with the enjoyment of the alleged cart track and if and all the averments of the petitioner on 01.11.2020 is taken to be true, the petitioner would have immediately preferred this application and not belatedly after 1 ½ month. The respondent avers that there are there 25 years old coconut trees, 2 banana trees and 50 years old well and humps and haystacks at the place where the petitioner avers to have cart track. The respondent avers that the petitioner has no connection with the 1st schedule property and only the respondents were in absolute possession and enjoyment of the said property without any interference. Hence, the respondent seeks for dismissal of this application.

4. ***The point for determination:*** The point of consideration arising in this application is whether this application is liable to be allowed?

5. No oral and documentary evidence is adduced on the petitioner's side. The respondents have marked exhibit R1, R2 and adduced no oral evidence.

Discussion

6. Heard both sides and perused case records. Rival contentions were considered carefully. Upon perusal of case records, it is evident that this suit is instituted for declaration of easement and consequential injunction restraining the respondents from interfering with the enjoyment of the cart track. The petitioner / plaintiff has filed this application for temporary injunction. The respondents have resisted the application that the property shown in the 1st schedule is the absolute property possessed and enjoyed by the respondents and the petitioner has no right of any sort and that there exists no such cart track as averred by the petitioner and the application is completely frivolous in nature. Admittedly there exist no dispute over the title of the both properties in 1st and 2nd schedule and the dispute is only with respect to the cart track alleged by the petitioner to run from

Vannampalli-Makkankottai Thar road to property in S.No. 13/4B on the property of the respondents in S.No. 125/4D and denied by the respondents. Though the petitioner has produced documents in his favour, he has not marked any documents for this application. The respondents have marked that computer chitta standing in the name of the respondents as exhibit R1 and photographs (8 in number) as R2 in support of his averments that there are only coconut trees, banana trees and haystacks in the place alleged by the petitioner. Perusal of the exhibits show that the S.No. 125/4D stands in the names of the respondents. However, no conclusion can be drawn from the exhibit R2, the photographs, as to existence or non-existence of cart track as there is no material place on record to show which part of the land or which land is photographed. The averments of the petitioner are that the alleged cart track is the only access for petitioner to access his land and that the respondents are interfering with it to prevent the petitioner from accessing his land. The cart track pleaded by the petitioner and denied by the respondents and their enjoyment can be decided only after full-fledged trial when both parties have opportunities to place their full case before this Court. Hence, this Court is of view that granting temporary injunction, without ascertaining the existence and enjoyment of the cart track, would amount to pre-trial decree. Therefore, this Court is of view that it is not just to allow this application since the matter in dispute shall only be decided after full-fledged trial.

7. In the result, this application is dismissed and no cost.

This order was typed by me in the computer, corrected by me and pronounced by me in open court on the 29th day of November 2022.

Sd/-XXXX

District Munsif
Uthangarai

Annexure

Petitioner side

Petitioner side witness: Nil

Petitioner side exhibits: Nil

Respondent side

Respondent side witness: Nil

Respondent side exhibits:

| Exhibit | Date | Document | Remarks |
|---------|------------|-----------------------------------|-----------------|
| R1 | 19.01.2021 | Computer Chitta for Patta No. 338 | Downloaded Copy |
| R2 | - | Photographs (8 in number) | Original |

Sd/-XXXXX
District Munsif
Uthangarai