

IN THE COURT OF THE SUBORDINATE JUDGE, DENKANIKOTTAI

Present : Thiru. A.Tamilselvan, M.L.,
Subordinate Judge, Denkanikottai,
Tuesday the 28th day of June 2022
I.A.No.1/2021 in (Old.OS.No.48/2021)
New.OS.No.411/2021

1. Venkatachalapati
2. Subramani
3. Nagaraj
4. Ramamurthy
5. Manjula
6. Suriya

... petitioners/Plaintiffs

-Vs-

1. Krishnamma
2. Venkatalakshmi
3. Varalakshmi
4. Ramamurthy

... Respondents/Defendants

This petition coming before me for final hearing on 20.06.2022, in the presence of Tmt. J.Sudha Reddy, counsel for the petitioners, and Tr.K.Satheesh Kumar, counsel for the respondents, upon perusal of entire case records and upon hearing both side and having stood over for consideration till this day, this court delivered the following.

ORDER

This Petition Under Order 39, R1 of CPC to grant a permanent injunction against the respondents/defendants Nos. 2 to 4 and these defendants, restraining them and their men from not alienating the schedule mentioned property until the disposal of the suit.

2. Facts giving rise to the present petition, in brief:-

The petitioner submitted the suit schedule property originally belonged to one Muthurayaswamy, S/o. Munisamappa ancestrally. In recognition of the title and possession of the said Muthurayaswamy, S/o. Munisamappa, The Tashildar,

Denkanikotta has also issued Patta Pass Book dated 16.07.1974 in which he was entered as the pattadar under Old Patta.No.758. The above said Muthurayaswamy, S/o. Munisamappa and his wife Susheelamma jointly sold the schedule mentioned property to and in favour of my father Venkataramaiah @ Pedha Venkataramaiah, S/o. Ramaiah under a registered Sale deed dated 23.06.1977 (Registered as Doc.No.834/1977, SRO, Denkanikotta) for a valid and proper sale consideration of Rs.5,100/-. From the date of purchase, the the petitioner father Venkataramaih @ Pedha Venkataramaiah was enjoying the peaceful possession of the suit schedule property. The petitioner submitted that even during the updating survey effected in the year 1983-86, the father Venkataramaiah @ Pedha Venkataramaiah was entered as the pattadar for the suit schedule property under Patta No.758. The special Tashildar, Denkanikotta has also issued the original UDR patta in the name of the father Venkataramaiah @ Pedha Venkataramaiah. From the date of purchase of the suit schedule property, the petitioner father Venkataramaiah @ Pedha Venkataramaiah continued to pay kist to ghe government. The petitioner submitted that the petitioner father died on 05.04.1999 leaving behind myself and the petitioner brothers namely Venkatachalapai, Nagaraj, Ramamurthy, Krishnamurthy, Lakshamma and Saraswathi as his only legal heirs. The petitioner brother Krishnamurthy died leaving behind his wife Manjula and his only son Suriya as his only legal heirs. The petitioner sister Saraswati died leaving heirs. The petitioner further submitted that after the death of the petitioner father, we were n peaceful possession and enjoyment of the suit schedule property. The petitioner submitted that the petitioner grandfather namely Ramaiah had two sons namely the petitioner and Venkataramaiah. The petitioner submit that since the petitioner father was the elder son of Ramaiah he was called as Venkataramaiah @ Pedha Venkataramaiah and the younger son of Ramaiah was called as Chinna Venkataramaiah. The petitioner submitted that the New Natham Survy No.1338/10, Old Natham Survey No.163/3A1A1B of Denkanikotta village originally belonged to Ramaiah, after the death of the said Ramaiah, the Natham patta jointly stood in the names of his two

sons namely Venkataramaiah @ Pedha Venkataramaiah and Chinna Venkataramaiah under Natham Patta No.2098 in which the said Venkataramaiah @ Pedha Venkataramaiah and Chinna Venkataramaiah have constructed individual houses and lived separately. It is clearly evident from this Natham Patta dated 30.04.1993 issued by the Special Tahsildar, Denkanikotta that the elder son of Ramaiah was called as Venkaaramaiah and the younger son of Ramaiah was called as Chinna Venkataramaiah. The fact that the two sons of Ramaiah namely Venkataramaiah @ Pedha Venkataramaiah and Chinna Venkataramaiah stayed in separate houses is also evident through the separate house tax receipts paid by them to the concerned authorities. After the death of the petitioner father the we have continued to pay the house tax receipts of our house separately. The petitioner submitted that, after the death of the petitioner father in the year 1999, we were in the peaceful possession and enjoyment of the suit schedule property. While things were being so, we were in the intention of dividing our family properties in the year 2019 applied for an Encumbrance Certificate on 11.03.2019. We were shocked and surprised to see the encumbrances created over the suit schedule property. The petitioner submitted that after the death of Chinna Venkataramaiah, his wife namely Krishnamma created an illegal gift deed dated 08.02.2008 (Registered as Doc.No.542/2008, SRO, Denkanikottai) in favour her children namely Venkatalakshmi, Varlakshmi and Rama Murthy in respect of extent of Ac.1.00 cents in survey No.893/2B. Subsequently Krishnamma created another illegal gift deed dated 25.11.2008 (Registered as Doc.No.5081/2008, SRO, Denkanikotta) in favour her children namely, Venkatalakshmi, Varlakshmi and Rama Murthy in respect of remaining extent of Ac.3.40 cents in survey No.893/2B, fraudulently created by the defendant No.1 to 5 are not binding on us and hence the gift deeds dated 08.02.2008 and 25.11.2008 are to be declared as null and void. The petitioner further submitted that defendant No.2 to 5 illegally transferred Patta in their names for Ac.1.00 in Survey No.893/2B and Main Survey No.893/2B came to be further Sub divide as 893/2B1 and 893/2B2. The petitioner approached the defendants to cancel the documents with respect to the suit

property created by the defendants, and several panchayaths are also held by the village elders to cancel the fraudulent gift deeds but the defendants have not come forward for the same. Finally, we approached the defendants on 1st week of December 2020 to cancel the fraudulent gift deeds but the defendants did not come forward to cancel the fraudulent gift deeds but the defendants did not come forward to cancel the fraudulent gift deeds created by them. As the efforts of us to cancel the illegally created documents by the defendants with respect of the suit property ended in vain, we have no other alternative then filing the suit for reliefs.

3. Brief facts of the 2nd Respondent counter filed adopted as Respondent Nos.1,3 and 4 :-

The suit is not maintainable either in law or on facts and the same is liable to be dismissed with costs. The respondents submitted that the claimed property is the property jointly purchased in the name of Peththa Venkata Ramaiah, by the father of the petitioners and the father of the defendants. The respondents is submitted further that it was purchased in the name of the plaintiffs' father, Peththa Venkataramaiah, as the eldest of the joint family at the time of the purchase and he submitted further that the Chinna Venkataramaiah had an equal share in the property. According to the counsel, Peththa Venkataramaiah's name was included in the revenue documents as the deed was registered in his name and Peththa Venkataramaya and Chinna Venkataramaya enjoyed the property equally as long as Venkataramaya was alive. The learned counsel submitted further that on 25.12.1997 Peththa Venkata Ramaya, the father of the plaintiffs wrote a will in the name of Chinna Venkata Ramaiah and his wife Krishnamma 1st respondent herein. Learned counsel for the respondents submitted further that the Chinna Venkataramaiah owned half of the property at the time of purchase, and the rest of the rights were bequeathed via Will dated 25.12.1997 to Chinna Venkata Ramaiah and his wife Krishnamma by the Pedha Venkata Ramaya. Counsel for the respondents, therefore, contended that the petitioners had no right to the property. Hence this petition is dismissed.

4. Heard both sides No oral and documentary evidence on both sides.

5. Points for consideration:-

Whether the petition could be allowed?

Point:-

6. Both sides heard. Pleadings and documents filed along with pleadings are carefully perused. are perused.

7. Learned counsel for the petitioner submitted that the petitioners filed a suit for partition against the respondents and prayed for the declaration of some documents as null and void. Learned counsel for the petitioner submitted that the petition schedule property originally belonged to one Muthurayaswamy and the petitioners' father Pedha Venkata Ramaiah purchased the property under a registered sale deed dated 23.06.1977. Learned counsel for the petitioner submitted that under UDR scheme 1983 the petitioners' father's name was entered as the Pattadar for this property under Patta No.758 that the Special Tahsildar has also issued original UDR Patta in the name of the petitioner's father and he paid Kist to the Government. Learned counsel for the petitioners submitted for the that petitioners father died on 05.04.1999 leaving behind the petitioners as legal heirs. Learned Counsel for the petitioners submitted that the petitioner's grandfather namely Ramaiya had two sons namely that the petitioners father Pedha Venkata Ramaiah and Chinna Venkata Ramaiah. Learned counsel submitted further that the New Survey No. 1338/10 Old Natham Survey No. 163/3A1A1B of Denkanikottai village originally belongs to Ramaiah after his death Natham Patta jointly stood in the name of petitioners father Peththa Venkata Ramaiah and Chinna Venkata Ramaiah under Patta No. 2098. The learned counsel submitted further that both petitioners father Pedha Venkata Ramaiah and Chinna Venkata Ramaiah have constructed individual houses and lived separately. The learned counsel for the petitioners submitted that after the demise of the petitioners father they came to know that the 1st respondent executed two separate Gift deeds in favor of respondents no 2 to 4 and they got Patta illegally The learned counsel for the petitioners submitted that the property owned by the petitioners mentioned in the petition has already been transferred by the respondents through the

Gift Document without any title and It is also possible to sell the property to another third party based on the gift document. So, Counsel for the petitioner contended that it was, therefore, necessary to issue an interim injunction restraining the respondents from making any encumbrance on the property.

8. Per Contra learned counsel for the respondents submitted that the claimed property is the property jointly purchased in the name of Peththa Venkata Ramaiah, by the father of the petitioners and the father of the defendants. The learned counsel submitted further that it was purchased in the name of the plaintiffs father, Pedha Venkataramaiah, as the eldest of the joint family at the time of the purchase and he submitted further that the Chinna Venkataramaiah had an equal share in the property. According to the counsel, Pedha Venkataramaiah's name was included in the revenue documents as the deed was registered in his name and Pedha Venkataramaya and Chinna Venkataramaya enjoyed the property equally as long as Venkataramaya was alive. The defendant is submitted further that on 25.12.1997 Peththa Venkata Ramaya, the father of the plaintiffs wrote a will in the name of Chinna Venkata Ramaiah and his wife Krishnamma 1st respondent herein. Learned counsel for the respondents submitted further that the Chinna Venkataramaiah owned half of the property at the time of purchase, and the rest of the rights were bequeathed via Will dated 25.12.1997 to Chinna Venkata Ramaiah and his wife Krishnamma by the Peththa Venkata Ramaya. Counsel for the respondents, therefore, contended that the petitioners had no right to the property. The learned counsel for the respondents submitted further that the respondents, who are the absolute owners of the property in the case, are enjoying its property so, petitioners are therefore not entitled to any restraining order against them.

9. Heard both sides. Perused the case records along with documents filed by the parties.

10. After careful examination of the arguments presented by the counsel for the parties and the documents filed in the case, whether the property found in the case was acquired in the name of the petitioner's father Pedha Venkata Ramaiah only in

his own money, or jointly by Pedha Venkata Ramaya and Chinna Venkata Ramaya, in the name of the deceased Pedha Venkata Ramaya and the alleged will executed by the pedha Venkata Ramaiah, is the question that arises in the case. Admittedly, the property has been transferred by the first respondent in the name of the other respondents through a gift document. The documents relied upon by the petitioners are stands in the name of their father Venkata Ramaiah. The respondents have changed the Patta to their own name on the basis of the gift document and registered it in the revenue documents. No change has been made in the revenue documents in the name of the petitioners after the death of the father of the petitioners and no documents have been shown to show the petitioners at present are in possession and enjoyment of the property. It was not shown on the part of the petitioner to whom the respondents were inclined to sell the property. The Court considers that it is not shown on the part of the petitioner that there will be an irreparable loss to the petitioners in this situation. Upon careful consideration, the petitioners have a prima facie case in this case, where the balance of convenience is in their favor but the petitioners are not shown on the petitioner's irreparable loss and therefore the Court concludes that the interim injunction remedy sought by the petitioners is not available to them. Hence, this petition dismissed.

11. For the reasons stated supra this court comes to the conclusion that the petitioners are not entitled to get an interim injunction as prayed and decided the point accordingly.

In the result, this petition is dismissed. No cost.

Dictated by me to the Steno-Typist, typed by her directly on the computer, corrected and pronounced by me in open court, this the 28th day of June 2022.

List of Witnesses and Exhibits on the side of the petitioner:-

Nil

List of Witnesses and Documents on the side of the respondents:-

NIL