

**IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF,
NAGERCOIL**

Present: **Thiru. R.Sundara Kamesh Marthandan, M.L.,**
Principal District Munsif, (FAC) Nagercoil.

Tuesday, on this the 11th day of June 2024

I.A.No. 2 of 2020

in

O.S. No. 193 of 2020

1. Indira Priyadharshini

2. Raniki Jancy Lekshmibai

... Petitioners/Plaintiffs

-vs-

1. A.Subha

2. T.Vaikundamoni

3. Sub Registrar,

Rajakkamangalam Sub Registrar's Office

... Respondents/Defendants

This Petition came up before me on 20.03.2024 for final hearing in the presence of Thiru. R.Ravi Kumar, Advocate for the Petitioners/Plaintiffs and Thiru. Ezhilarasu, Advocate for the 1st Respondent and Thiru. J.Partha Sarathy, Advocate for the 2nd Respondent and Government Pleader for the 3rd Respondent and upon hearing the Petitioner's and 2nd and 3rd Respondent's counsel and upon perusing the case records and having stood over for consideration till this day, this Court hereby delivers the following:

ORDER

1. The Petitioners have filed the above Petition under Order XXXIX Rule 1 and 2 and Section 151 seeking interim injunction restraining the Respondents

1 and 2 from causing disturbance to the Petitioners' possession, by way of executing documents or in any other manner pending disposal of the above suit.

2. The affidavit of the 1st Petitioner has been filed in support of the above petition. The Petitioners claimed to be the daughter of Ponnuswamy Nadar, Seramangalam Pottal, Manavalakurichi, who died on 31.03.2014. The said Ponnuswamy Nadar did business in Australia, Uganda and other countries and amassed wealth in crores and purchased properties in India at Chennai, Tirunelveli, Kanyakumari, Trivandrum, worth several crores. The 2nd Respondent is the Petitioners' mother's younger sister Kumari Thangam's son. When the Petitioners were minors, one Sukumari Prathibha, by filing various false cases have harassed the Petitioners' father Ponnuswamy Nadar and he fell ill, quite often. The Petitioners' mother Kumari Thangam was illeterate. Hence the 2nd Respondent and one Gopala Krishnan friend of the Petitioners' father, acted as the Petitioners' father's manager, in order to collect the rent from properties and manage them and also to contest the cases filed against the Petitioner's father Ponnuswamy Nadar.

3. The Petitioners' parents Ponnuswamy Nadar and Kumari Thangam trusted the said Gopalakrishnan, the 2nd Respondent Vaikundamani and his wife Kalavathi. The Petitioners' father Vaikundamani have settled some properties in favour of the Petitioners, who were then minors. As time passed on, the 2nd Respondent along with his companions had plans to exploit the Petitioners' father's inability and the Petitioners' mother illiteracy and the Trust they had on

the 2nd Defendant. In order to embezzle the properties, with malafide intent, they have manipulated several power deeds, by stating as it they are required for contesting the case. The 2nd Respondent, his wife Kalavathi, their companion Gopalakrishnan, Sukumaran Nair and various others, have conspired illegally and acted against their conscience and by giving false reason have created false documents, regarding the Petitioners' and Petitioners' parents properties and thereby embezzled them.

4. On 29.12.2017 as the 1st Petitioner attained the age of majority, her marriage was solemnized during the year 2018. Only then, she came to know the 2nd Respondent's malafide act. The Petitioners' father Ponnuswamy Nadar had died on 31.03.2014. Under Settlement Deed dated 23.10.2013 bearing Document No. 2958 of 2013, the Petitioners' father had settled 2.30 acres of land along with the petition schedule properties and 13 items properties on the minors. With intent to grab those properties, the 2nd Respondent by stating false reasons had obtained a power deed bearing document No. 187 2011 Rajakkamangalam Sub Register Office, from the Petitioners' father. The concerned Sub Registrar had refused to furnish the Power of Attorney to the Petitioners. Hence necessary orders have to be passed directing the the Sub Registrar to produce that power of attorney.

5. The Petitioners' father Ponnuswamy Nadar has no right to execute power in respect of the Petitioners' property. As such the Power of Attorney and Sale deeds executed thereon, do not have any legal validity. The same are sham

and nominal. The document bearing No. 1045 of 2012 Rajakkamangalam Sub Register Office had been created by the 2nd Respondent in favour of the 1st Respondent. The said Sale Deed also, do not bind the Plaintiff. The consideration mentioned in that Sale Deed was not paid to the Petitioner at any point of time. Though the Petitioners' mother gave complaint against the 2nd Respondent his wife Kalavathi, Gopalakrishnan, Sukumaran Nair and their companions, in view of the influence the Respondents have over them, the Police have not taken any proper action. If the Respondents creates further documents in respect of the petition schedule property, in pursuant to the false Sale Deed bearing Document No. 1045/2012, the Petitioners will be put to irreparable loss. The Respondents have plans to create more encumbrances. Hence the above Petition.

6. The 2nd Respondent had filed adoption memo adopting the written stated as counter. The 2nd Respondent admitted the Petitioners' averment that late Ponnuswamy was the absolute owner of the property and he purchased properties in different countries. The 2nd Respondent is close relative of Plaintiff's mother and he had been an anchor in their progress in life and was active as a guardian to the whole of the family. The said Ponnuswamy's first wife Sukumari Pratheeba had instituted many frivolous suits and petitions against late Ponnuswamy and the 2nd Defendant along with one Gopalakrishnan stood with late Ponnuswamy and defended their suits and petitions. Late Ponnuswamy filed a suit for declaration of title and possession in C.S.No. 743

of 2003 Munsiff Court of Kollam.

7. The said suit was followed by 2nd Defendant late Ponnuswamy had full faith in 2nd Defendant. Hence he delegated authority to the 2nd Defendant to manage the property and the suits instituted against him. Sukumari Pratheebha in conflict with late Ponnuswamy had filed a police complaint and thereafter Habeous Corpus petition HCP. No. 802 of 2005 at Chennai High Court alleging that the 2nd Defendant, Kumari Thangam, the Plaintiff's mother have illegally detained Late Ponnuswamy. The Hon'ble High Court upon examination of the 2nd Defendant had found that the allegation against the 2nd Defendant is unfounded and not maintainable and dismissed HCP petition on 15.08.2005. Thereafter Sukumari Pratheebha filed the MHOP No. 113 of 2007 before District Court questioning the mental health condition of Late Ponnuswamy the Plaintiff's father.

8. The 2nd Respondent stood with late Ponnuswamy and enabled in defeating the motive of Sukumari Pratheeba. The Plaintiff's father thereafter filed partition suit in O.S.No. 98 of 2008 before Principal District Court and the 2nd Defendant was the sole person responsible for assisting late Ponnuswamy in contesting the suit successfully. Thereafter Sukumari Pratheeba instituted several suits against late Ponnuswamy and 2nd Defendant helped to defend those suits. Late Ponnuswamy until his death was in stable condition with good conscience to execute any document. Kumari Thangam is a knowledgeable person and had given evidence before the Court along with 2nd Defendant in various civil

proceedings against her husband late Ponnuswamy.

9. Kumari Thangam who had independently filed GWOP No. 29 of 2016 before District Court, Nagercoil and given evidence stating that the 2nd Defendant is a good person, a care taker of the family and she acts on the good advice of the 2nd Defendant. It is denied that said Kumari Thangam has no knowledge of reading and writing. The 2nd Defendant worked for the welfare of late Ponnuswamy and his family. During his lifetime, he had sold many properties including the property that was settled in favour of the Plaintiffs. The 2nd Respondent being the caretaker of the family had advised the Plaintiff for their welfare and the 1st Plaintiff had poor character in the family. She had eloped with one Ajith and an FIR in Crime No. 275 of 2015 under section 365, 395, 379 (NP) 452, 148 of IPC Nesamoni Nagar Police station was registered.

10. She was retained from the said Ajith, by the efforts of 2nd Defendant. The late Ponnuswamy had entrusted the family to the 2nd Respondent to take care of and maintain the property along with the Kumari Thangam. The 2nd Defendant being a close relative of Plaintiffs, advised the 1st Plaintiff of her ill doings and her elopement, with one Ajith. The 1st Plaintiff developed vengeance towards 2nd Respondent, for his interference with her personal life. The 1st Plaintiff was married with one Thangeshwaran and the 2nd Respondent as good wisher of the family had shown displeasure in arranging marriage with the said Thangeshwaran. The 2nd Respondent's wife had not managed the affairs with the family and property of the Plaintiffs.

11. The Late Ponnuswamy had executed Settlement Deed Document No. 2958 of 2003 over his properties in favour of the Plaintiffs, appointing late Ponnuswamy himself as guardian only for the purpose of preventing frivolous suit against the properties, by his prior wife Sukumari Pratheeba. During the life time late Ponnuswamy was in financial crisis and he had to alienate certain properties which are also the schedule of Settlement Deed. Late Ponnuswamy had alienated properties with the knowledge of Kumari Thangam, when the Plaintiffs are minors for their benefits and welfare of the family. The property was alienated for the expenses of various suits and petitions filed by Sukumari Pratheeba at different Courts, for family expenses and also medical expenses. The 2nd Respondent denied of fraudulent and forged documents executed by him.

12. The 2nd Respondent executed document in favour of the 1st Respondent as power of attorney of late Ponnuswamy, which was attested by Kumari Thangam the Plaintiffs mother. As per the power deed, the 2nd Defendant had sold properties to A.Subha, Pushparaj, Masilamani, Mariadasan and Arun under various Sale Deeds of a different extent. The entire sale consideration of the alienated property were deposited into fixed deposit accounts of the Plaintiffs. Those facts were recorded in the Sale Deed bearing Document No. 52 of 2012. In the guardian OP filed by the Plaintiff's mother GWOP No. 29 of 2016 in the property description, she had mentioned the western boundary as the property sold by Ponnuswamy and she is aware of the sale and the deposit made

in the name of the Plaintiff. The 2nd Respondent had also pleaded that the Plaintiff's father and mother have sold some properties of the Plaintiffs which are scheduled in the settlement deed bearing Document No. 2958 of 2003. After purchase the 1st Respondent is in absolute possession and enjoyment and she had sold her property enhanced. The interim relief claimed by the Petitioners is not maintainable. Hence the 2nd Respondent prayed for dismissal of the above petition.

13. The Point for Consideration is whether the Petitioners are entitled for the petition relief?

14. The Petitioners' case is that the property was originally purchased by the Petitioners' father out of his earnings by doing business across the world and that during the minority of the Petitioners, the Petitioners' father have settled the Petition schedule property among others namely 2.30 acres and 13 items of properties on the minors. However even during the minority of the Petitioners, the 2nd Respondent had conspired along with his wife and friend and obtained a false Power of Attorney, from the Petitioners' father who has no right to do so and thereafter with the strength of the said Power of Attorney, he had executed Sale Deed in favour of 1st Respondent. The Petitioner had further contended that the Petitioners' father has no right to execute such Power of Attorney in respect of the Petition schedule property.

15. Further it is also stated that the sale consideration mentioned in the Sale Deed in favour of the 1st Respondent was never paid to the Petitioners. As

such the Sale Deed is not valid and not binding the Plaintiff. The Petitioner had stated that in furtherance to the said Sale Deed, the Respondents have conspired to create more and more encumbrance over the suit schedule property. On perusal, the Plaintiff had filed the above suit challenging the Power of Attorney executed by the Petitioners' father in favour of the 2nd Respondent. The Petitioner had pleaded that the Petitioners' father is no more and that the Sub Register, Rajakkamangalam had refused to furnish the copy of the Power of Attorney to the Petitioners and as such they could not produce the said Power of Attorney, before this Court.

16. The Petitioners' claim that she is the owner of the Petition schedule property. However the said property had been dealt with by the 2nd Respondent by obtaining power from the Petitioners' father and that no consideration whatsoever was granted in favour of the Petitioner. Though there are rival claims stating that the 2nd and 3rd Respondents have exploited the Plaintiff's father on the one hand and the 2nd Respondent claiming to be the well wisher of late Ponnuswamy family and had claimed to have acted on the best interest of the family of late Ponnuswamy on the other hand. The relevant pleadings from the 2nd Defendant written statement or extracted hereunder:- “4*During the life time of Late Ponnuswamy he had sold many properties including the property of that settled in favour of the Plaintiffs*”. “14. *It is submitted that the father and mother of the Plaintiff have alienated some properties of the Plaintiffs which are scheduled in the settlement deed doc.No.*

2958 of 2003.....”

17. The above extracted portion of written statement would go to show that the properties which were settled on the Plaintiff had been alienated in the name of late Ponnuswamy and his second wife Kumari Thangam. The same would only disclose that the minor property had been dealt with. For which, the 2nd Respondent had pleaded as if GWOP No. 29 of 2016 was filed by the said Late Kumari Thangam. Since it is brought to the attention of this Court that only by GWOP No. 29 of 2016, the Petitioners' properties have been dealt with. In such case, the Petitioners have not stated as if whether they have challenged the order in GWOP. The 2nd respondent had also stated to have deposited sale consideration in minor's account. However along with the Written Statement, the 2nd respondent had not filed neither the Guardian O.P. Order or proof for deposit money in minor's bank account.

18. Further from the extracted pleadings in 2nd Respondent's Written Statement, the Petitioners' case that the properties were settled on them is corroborated and that the properties have been dealt by the 2nd Respondent claiming to be the Power Agent of late Ponnusamy, who had already settled the property in favour of the Petitioners is also prima facie established. Though the 1st and 3rd Respondents have entered appearance they have not filed any counter opposing the Petitioners' contention. As alleged by the Petitioners, if any further encumbrance is made over the property, the same will cause unnecessary hardship and multiplicity of proceedings. The Petitioners have made out Prima

Facie Cae, Balance of Convenience and irreparable injury is also in favour of the Petitioners. Hence this Court is also considered view that the Petitioner is entitled for the petition relief.

In the result, the above petition is allowed. No cost.

Dictated to the Steno typist, and typed by her, directly in Computer corrected and pronounced by me in Open Court this, the 11th day of June, 2024.

Sd/-
Principal District Munsif, (FAC)
Nagercoil.

Petitioners side witnesses and documents:- Nil

Respondents side witnesses and Documents :- Nil

Sd/-
Principal District Munsif, (FAC)
Nagercoil.

Fair/ Draft Order
I.A.No.2 of 2020 in
O.S.No.193 of 2020
Date: 11.06.2024.
PDM Court, Nagercoil.