

In the Court of the II Additional District Munsif, Nagercoil
Present: Thiru.R.Sundara Kamesh Marthandan, M.L.,
II Additional District Munsif, Nagercoil.

Tuesday, on this the 6th day of August 2024.

I.A. No.2 of 2020

in

Original Suit No.32 of 2020

CNR No.TNKK04-000063-2020

C. Yesudhasan

.... Petitioner/Plaintiff

-vs-

C. Xavier Pushparaj

.... Respondent/1st Defendant

This Petition came up before this Court on 15.07.2024. Thiru. R.Rathakrishnan Advocate for the Petitioner/Plaintiff and Thiru. T.R. Ezhamparithy Advocate for the 1st Respondent. 2nd Respondent died, upon treating that the arguments of Petitioner and 1st Respondent heard and upon perusing the case records and having stood over for consideration till this day, this Court delivers the following:

ORDER

1. The Petitioner had filed the above Petition under Order XXXIX Rule 1 & 2 and Section 151 CPC. seeking an Order of temporary injunction restraining the Respondent/1st Defendant, from interfering with the Plaintiff's peaceful possession and enjoyment, over the Plaintiff's schedule property and from alienating the Plaintiff's share in the Plaintiff's schedule property, till the disposal of the suit.

2. The Petitioner had stated that the property measuring 14.5 cents of wet land comprised in Resurvey No. J-1-4/8 Old survey No. 2671, Nagercoil Village, Presently Nagercoil South Village, jointly belongs to the Petitioner

and the Respondents. Earlier, the same belonged to the Petitioner and Respondent's mother Inase. The Plaint schedule property is the self acquired property of the said Inase. The said Inase and her husband Curuz Antony had six children namely, Rosaly, Yesu Mariya Selvaraj(the 2nd Defendant herein), Annammal, Yesudhason(the Petitioner herein), Xavier Puspharaj, the 1st respondent herein and Yesu Paneer Selvam. The respondents are Petitioner's brothers.

3. On 07.12.1990, the said Inase had expired. On 21.03.1993, the Petitioner's father had also expired. During the lifetime of Inase, she made a family arrangement, whereby the first share from the road, was allotted to the Petitioner and the continuing 2nd share was allotted to the 2nd defendant and the remaining four shares were allotted to the Respondent/1st defendant's Xavier Pushparaj, Rosaly, Annammal and Yesu Paneer Selvam. Thereafter, the said legal heirs are jointly enjoying the Plaint schedule property. Under Release Deed bearing Doc.No.3501 of 2004, the Respondent/1st Defendant's sister Rosaly, Annammal and brother Yesu Panneer Selvam have relinquished their right over the Plaint schedule property in favour of the Respondent/1st Defendant.

4. Even thereafter, the Petitioner/Plaintiff and the Respondents are enjoying the Plaint Schedule Property, till this day. There is a mud wall, existing inbetween the Petitioners, 2nd Defendant's and the 1st Defendant's shares. The Petitioner is having ill health. Hence he had not got the revenue

record mutated in his name. On 27.01.2020, the Petitioner gave an application before the Revenue Official to mutate, the Revenue Records, in his name, with regard to his share, over the Petition Schedule Property.

5. On 04.02.2020, the Respondents/Defendants along with some strangers entered into the Plaint schedule property and erected an advertisement board, advertising to sell the portion, which was allotted to the Plaintiff. The Petitioner enquired about the same and raised his objection. However, the Respondent/1st Defendant's threatened the Petitioner that, he is going to sell the Petitioners' share in the Plaint Schedule property, from the road, to strangers and also threatened that if anybody restrains him, he will kill them. The Respondent/1st Defendant had also demolished the mud wall, inbetween the 2nd Defendant's share and the Plaintiff's share.

6. The Petitioner had also stated that the 2nd Defendant is a formal party and that no relief was claimed against the 2nd Defendant. Only for comprehensive disposal of the suit, the 2nd Defendant has been added as a party to the suit. The Petitioner apprehends that the Respondent/1st Defendant will illegally encumber the share allotted in favour of the Respondent/1st Defendant, in the Plaint Schedule Property. The balance of convenience is also in favour of the Petitioner/Plaintiff. If the Respondent/1st Defendant, succeed in his legal attempt, the Petitioner's rights will be defeated, which cannot be compensated in any manner. Hence the Petitioner filed the above Interlocutory Application.

7. Originally, in the above suit, the Petitioner had arrayed two respondents as party defendants and filed the above suit. During the pendency of the above suit, the 2nd defendant had died. Thereafter, the Petitioner took out application I.A. No.5 of 2022, which came to be allowed on 24.08.2022 and the legal representative of the 2nd defendant were impleaded as Defendants 2 to 5 in the above Suit. Though the Petitioner had taken such steps to implead the legal representatives of the deceased 2nd Defendant in the Suit, the Petitioner had not taken any such steps in the above I.A. 2 of 2020.

8. Further in the above I.A. No. 2 of 2020, on 02.03.2020, the 1st respondent was set exparte. Thereafter the 1st respondent came up with an application in I.A. No.3 of 2020 seeking an order to set aside the exparte Order dated 02.03.2020, in I.A. No. 2 of 2020. The said I.A.No.3 of 2020 came to be allowed on 26.03.2021. However even after I.A.No. 3 of 2020 being allowed, the 1st respondent had not filed counter in the above Petition. On 24.08.2022, the 1st Respondent endorsed '*No Counter for R1 in I.A. No. 5 of 2022.*' Since 1st Respondent had not filed Counter, the 1st respondent is also set exparte. In so far as the 2nd respondent is concerned, the above Petition got abated.

9. The point for consideration is whether the above Petition has to be allowed or not?

10. The Petitioner's cases that the suit schedule property was originally owned by the Petitioner's mother Inase and that she had died. Her husband

had also died. The Petitioner claimed to have acquired the property, even during the lifetime of her mother, under a family arrangement, whereby the property situated next to the road was allotted to the Petitioner/Plaintiff and the other children of Inase were allotted the other shares, out of which three children have executed Release Deed in favour of the Respondent/1st Defendant.

11. The Petitioner had also stated that all of a sudden, the Respondent/1st Defendant came up with men and erected, advertisement board stating that share situated adjoining the road is for sale and when the Petitioner objected to the same, the 1st Respondent/Defendant had threatened the Petitioner with dire consequences and the same necessitated the Petitioner to file the above suit.

12. On perusal of the Plaint, it could be seen that the Plaintiff had sought for Permanent Injunction and the suit schedule property is mentioned as 14.5 cents. Even in the above Interlocutory Application the Petition schedule property is mentioned as 14.5 cents. In the Affidavit filed in support of the above Petition, at paragraph one, the Petitioner had stated that the property owned by his mother Inase was 14.5 cents. Having stated so, the Petitioner had also stated that there was a family arrangement and a share was allotted to the Petitioner. In such case, the Petitioner had not given his so allotted share, as the Plaint schedule Property as well as the above Petition schedule property. The Petitioner's claim of allotting independent shares to

the children of Inase and the Petitioner's act of describing the entire 14.5 cents as the Petition schedule property. would reveal that the Petitioner had not made out a prima facie case.

13. The Petitioner's claim is based on family arrangement. However he has not stated as if, whether the alleged family arrangement is written or oral. The details, facts and material records to show as to from which date, the said family arrangement came into force is also not stated. Those facts pleaded by the Petitioner could be adjudicated only at the time of Trial. Such being the case, as the Petitioner has not made out prime facie case. The Petitioner's claim of allotment of the share, adjoining the road, to him is itself has to be decided at the time of trial, the question of balance of convenience and irreparable injury also are not in favour of the Petitioner. Hence this Court is of the considered view that the Petitioner is not entitled for the Petition relief.

In the result, the above Petition is dismissed. No cost.

Dictated to the Steno-Typist, transcribed and typed by her in computer and corrected and pronounced by me in Open Court, this the 6th day of August 2024.

sd/-

II Additional District Munsif
Nagercoil.

Petitioners side witness & Documents : Nil

Respondents side witness & Documents : Nil

sd/-

II Additional District Munsif
Nagercoil.

I.A.No.2 of 2020
in
O.S.No.32 of 2020
Fair Order
Date : 06.08.2024

I.A.No.2 of 2020

in

O.S.No.32 of 2020

Date : 06.08.2024

Order pronounced in Open Court

The above Petition against 2nd
Respondent got abated. Since 1st
Respondent not filed Counter, 1st
Respondent set exparte.

In the result, the above Petition
is dismissed. No cost.

II ADM