

**IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present: Thiru. R. Sundara Kamesh Marthandan, M.L.,

I Additional District Munsif, Nagercoil.

Thursday, on the 6th day of February 2025

I.A. No. 2 of 2021

in

O.S. No. 206 of 2021

CNR. No. TNKK04-000272-2021

S.Mary Geetha

... Petitioner/Plaintiff

-vs-

1. Robinson

2. Rajesh

... Respondents/ Defendants 1 & 2

This Petition came before this Court for final hearing in the presence of, Mr. M. Parameswaran, Advocate for the Petitioner, Mr. Padmasanan, Advocate for the 1st Respondent, the 2nd Respondent was set exparte. Upon hearing both sides and Upon perusing the case records, having stood over for consideration, till this date, this Court hereby delivers the following:

ORDER

1. The Petitioner had filed the above Petition under Order XXXIX Rule 1 and 2 and Section 151 Code of Civil Procedure seeking Ad-interim injunction, restraining

the Respondents, from making any construction, over the Petition 'B' & 'C' schedule property or changing the physical feature and nature of Petition 'B' & 'C' schedule properties or increasing the height of the existing floor of the Petition 'B' & 'C' schedule properties, in any manner, till the disposal of the suit.

2. The Petitioner had stated that she had filed the above suit for Permanent Injunction and for other reliefs. She had purchased Three cents of plot, in Re.Sy. No. H8-4/1 of Nagercoil South Village (previously Nagercoil Village) under Sale Deed dated 13.12.2017 bearing Doc. No. 3217 of 2017, described as namely Petition 'A' schedule property. The Plaintiff had further stated that she got a pathway right over the private street, located on the adjacent southern side of the Petition 'A' schedule property under the said Sale Deed, by way of grant. She had also stated that she had paid consideration, for the pathway right, which is running East-West, having length of 185 feet and breadth of 11.5 feet on it's western corner and 11 feet width on it's eastern corner. The Petitioner has stated that she had described the same as Petition 'B' & 'C' schedule be properties.

3. The Petitioner has further stated that the Petitioner, the Respondents 1 and 2 and two other plot owners, have right over Petition 'B' & 'C' schedule property, as per the condition, mentioned in the documents. The Petitioner had further stated that the said street runs East-West and joins the Thirukudumbakoil Public Street. Further there are four plots owners, available on the northern side of the said street and all the four plot owners, have right to use the street for passage, drainage, gutter, electricity connection and cable connection, without disturbing the use of others. The plots

situated on the southern side of the said street, do not have any right over the said street. They have separate pathway on their patta land.

4. Upon purchase, the Petitioner entered into possession of the Petition schedule property, got revenue records mutated, in her name in Sy. No. H8/4-1. She had applied for building plan, during the year 2018 vide Application No. 1525/2018/B3 and got building plan approval and constructed a single storey terrace roof house building, in Petition 'A' schedule property and completed work, during the October 2019. She also conducted house warming ceremony on 03.11.2019. The building is assessed to Property Tax by assigning Door Nos. 32-B3-1 for the Ground Floor and Door No. 32-B3-2, for the first floor of the building. The Petitioners house building is having a height of 1.75 feet, from the floor level of the said street.

5. The Petitioner's house building, gutter water passes, through the said street, through underground pipeline system. The Petitioners excess rain water and waste water, also passes through the said street, without any disturbance to anyone else. The Petitioner is using the said street, for those purposes, having got the right, by grant as like that of other plot owners. The Respondents 1 and 2 are brothers. They have one plot, on the adjacent eastern side of Petitioner's house building. The said plot is the eastern most plot, among the four plots. The Respondents 1 & 2 have their ancestral property, on the adjacent eastern side and north-eastern side of the above said plot and the said street. They have no right, over the street, connected with their ancestral property.

6. The Respondents 1 and 2 have constructed house building foundation on

their ancestral Patta land and the foundation is having six feet height, from the floor level of the said street. After putting foundation construction, the Respondents 1 and 2 have planned to increase the height of the said street, from the present floor level to four feet above and marked the height at the Petitioner's compound wall on 01.10.2021. The same was questioned, by the Petitioner, for which, the Respondents claimed that they intend to raise the ground level of the street, by Four feet for using the same, for their ancestral property.

7. The Present floor level of the street does not have any disturbance to the users of the street, by the four plot owners, including the Plaintiff. If the height of the street floor level, is increased from the present level, to the said marked level of four feet, it will cause great difficulty to the Plaintiff. The excess rain water and wastewater and the gutter water, will not have way to come out of the Petitioner's property. The same will cause, hardship to the Petitioner, the same cannot be rectified at any time. The Petitioner has right to protect, her right of grant, over the street situated in front of the Petition 'A' schedule property. On 02.10.2021, the Respondents have put up construction materials, for doing the alleged construction work. Hence on 02.10.2021 the Petitioner gave complaint, to the Sub Inspector of Police Nesamony Nagar. The Police advised the 1st Respondent to stop the work. However he had not heeded the police advice and started to construct on 05.10.2021, on the adjacent southern side portion of their eastern Fourth Plot.

8. Though the Petitioner objected, the Respondents have not heeded. Hence on 06.10.2021, the Petitioner gave online complaint to the Superintendent of Police,

Kanyakumari District. Since the Respondents 1 and 2 are forcibly making construction over the Petition 'B' & 'C' schedule street, without any authority. They have to be restrained by injunction. If they are injuncted, the Petitioner will be prejudiced. The Petitioner has Prima facie case, Balance of Convenience, is in her favour. If the Respondents are not Injuncted the Petitioner will be put to irreparable loss and injury. Hence the above Petition.

9. The 1st Respondent had filed counter. The 2nd Respondent was set exparte. The 1st Respondent had stated that the Petitioner, do not have any right over the Petition 'B' schedule pathway. The Petitioner had not implead the owners of the four plots, is situated on the northern side of Petition 'B' schedule property. Hence the suit is not maintainable in law. The four owners are necessary parties to the suit. Without them, the suit is not maintainable. The Petitioner's claim that the Petition 'B' schedule property, is street, is not correct. The same is the property of private parties. Out of 60 cents, the owners have divided the property, among them and one among the owners namely Prakasa, got Fourteen cents, he had sold Plots with extent of three, four cents and provided pathway on the South-East, as stated in the Petition 'B' schedule property. The said Prakasa had sold the pathway to the present respective purchasers of the plots. He had not converted the same, into street till date.

10. The 1st Respondent had purchased pathway right under Sale Deed dated 22.02.1994 bearing Doc. No. 626 of 1994. Since then he is enjoying the pathway. The Plaintiff had purchased 4.4 cents from one Jacculing Juliyad and M.P. Dical, to the east of the Plaintiff's house as per document dated 13.03.2019 bearing Doc. No. 893

of 2019, District Registrar, Nagercoil. The absolute right over the Petition 'B' schedule pathway was given, since the executor had purchased right from original owner Rasiah. The Petitioner had laid pipe on the ground level. The Petitioner constructed compound wall, by encroaching One feet, on the pathway and put up gate opening, on the pathway, for which she has no right. The same causes obstruction on the enjoyment of adjacent plot owners, encroaches the pathway and causing disturbance.

11. The said pathway ends on the eastern ancestral property of the 1st Respondent's house. The 1st Respondent Constructed on the ancestral property, even before filing of the above suit. The Petitioner's claim of putting a foundation is denied as false. The Petitioner's claim that the Petitioner was granted right over Petition 'B' schedule property is denied. The Petitioner's house drainage will not stagnate, because of the 1st Respondent's interference. The western street drainage and the 'B' schedule property pathway is lying on the same level. Hence the 1st Respondent had put up about 9 inch drainage kal, by cement flooring adjacent to the South, East, West boundary, for discharging the waste water and drainage water, from the 1st Respondent's house, on the east of Petition 'B' schedule property.

12. If the said drainage kal is not put up, about nine inch height, from the Ground Level, the drainage water, on from the western street will infiltrate into the Petition 'B' schedule property and stagnate in the pathway. For averting stagnation, from the eastern houses of the said pathway, the 1st Respondent had fixed pipe on the east and put up drainage kal, to discharge the drainage water and rain water on the

western side drainage on the street. The same will not affect, the usage of the pathway. The same will not cause hardship or difficulties to the Plaintiff. The Petitioner has no Prima facie case. The Petition is not maintainable in law. There is no cause of action to file the above suit as well as injunction application. If any order of injunction is granted, it will cause great hardship, to the 1st Respondent and will not be able to drain water from the 1st Respondent's house to the western public street drainage. Hence the 1st Respondent prayed for dismissal of the above Petition.

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

14. The Petitioner's case is that the Petition 'B' & 'C' schedule properties is the pathway/street situated in front of the Petition 'A' schedule property. The Petitioner had further stated that the said Petition 'B' & 'C' schedule property pathway/street is running East-West and that there are Four plots situated on it's North and the owners of those four plots alone have right over the Petition 'B' & 'C' schedule properties, for the purpose of ingress, egress to their respective plots and also for draining gutter water, waste water and excess rainwater. The Petitioner's further case is that the Respondents are brothers and their property is situated to the East of the Petitioner's property and to the further East, the Respondent's ancestral property is situated.

15. Though the Petition 'B' schedule property touches the said ancestral property, the Petitioner had claimed that for the Respondent's ancestral property, no right over the Petition 'B' & 'C' schedule properties has been granted. The Respondents is said to have put up additional, new construction, in their ancestral

property and had raised their building's ground level, too high i.e. six feet and in order to provide access for their ancestral property, through Petition 'B' & 'C' schedule properties, the Respondents have marked at about four feet, from the Petition 'B' & 'C' schedule properties' ground level, in the Petitioner's compound wall. Further when the Petitioner enquired, the 1st Respondent informed the Petitioner, that they will raise the ground level of Petition 'B' & 'C' schedule property to that extent i.e. four feet height, from the existing ground level.

16. The 1st Respondent in his counter had stated that the Petition 'B' & 'C' schedule property is not a street, as claimed by the Petitioner, it forms part of Patta land and the owner namely one Prakasa, who was the owner of Fourteen cents had laid out that Fourteen cents, into smaller extents measuring Three and Four cents, have sold them to other persons and in order to provide access for the plots, sold by him, he had earmarked the Petition 'B' schedule property. The 1st Respondent further case is that the ground level and the drainage level are even and as such, unless the drainage height is raised by nine inches, the wastewater and excess rain water, will stagnate in the Petition 'B' and 'C' schedule properties.

17. It is also claimed that the Petitioner had encroached about one foot in the Petition 'B' schedule property and had also laid his compound gate, opening towards Petition 'B' & 'C' schedule property, causing inconvenience, disturbance to the persons, having right over the said pathway. The Respondents had objected the Petitioner's claim, stating that the Petitioner do not have any right over Petition 'B' schedule property and as such, she is not entitled for the Petition relief.

18. The Petitioner had exhibited Ex. P1 to P13. In Ex P1, Sale Deed dated 13.12.2017 bearing Doc. No. 3217 of 2017, in favour of the Petitioner, it has been recited as follows:- “மேற்படி சொத்தை தொட்டு தெற்குபக்கம் உள்ள பாதை வழியாக மேற்கே உள்ள ரோடு வரையிலும் தடையில்லாமல் போய்வந்து புழங்கிக் கொள்ளும் பாதை அவகாசமும் மின்லைன் கேபிள்லைன் பைப்லைன் தொலைபேசி லைன் கொண்டு செல்வதற்கான அவகாசமும் மழைநீர் மற்றும் கழிவு நீர் போக்கு செய்வதற்கான அவகாசமும் சேர்ந்து ஆகும்”. Hence while adjudicating the above Interlocutory Application, it is suffice, to see whether the Petitioner had made out Prima Facie Case, Balance of Convenience and Irreparable Injury. From the pleadings made on either side and the exhibits marked on the Petitioner’s side, it could be seen that the Petition ‘B’ & ‘C’ schedule property has been earmarked for giving access to the Petition ‘A’ schedule property as well as the other three plots situated on the North of Petition ‘B’ & ‘C’ schedule properties. Such being the case as it is stated that it has been earmarked in private land, for the purpose of giving access, to the plots sold, by the owner of the larger extent of land i.e. 14 cents by it’s owner Prakasa, this Court is of the considered view that the Petitioner had established Prima facie case.

19. With regard to balance of convenience, the Petitioner had stated that he had already completed his building construction in Petition ‘A’ schedule property and he drains the gutter water, excess rain water and wastewater, through underground pipeline, laid in Petition ‘B’ & ‘C’ schedule property. Though the same is disputed by

the Respondent. The Respondent also claimed that, putting up drain, at an height of nine inches is necessary, for ensuring that the rain and excess rainwater, gutter and wastewater, do not stagnate over Petition 'B' & 'C' schedule properties. The Petitioner's grievance before this Court is that the Respondents have intended to raise the ground level of Petition 'B' & 'C' schedule property, for about four feet. Such being the case, if the ground level is raised for about four feet, on the pathway, the ground level of the house, will come below and as such the drainage and excess rainwater, will not flow upwards, as against the law of gravity. The same will cause inconvenience and hardship to the Petitioner, from using her house property, situated in Petition 'A' schedule property. As such balance of convenience is in favour of the Petitioner.

20. The Respondent claimed to have completed his construction, even prior to filing of the suit. The Petitioner's case is the Respondents' house is constructed by increasing the ground level in their ancestral property. Though the Respondents claims that they have right over the Petition 'B' & 'C' schedule property, for accessing their ancestral property. The same has to be decided, while adjudicating the original suit. During the pendency of the suit, putting up any construction, raising the Ground Level, will definitely alter the nature of the Petition schedule property and will also cause prejudice, to the Petitioner. It is also settled principle of law, Pending suit, the nature of the suit property, should not be altered, unless absolute exigency exist. In the case on hand the Respondents have not made out any exigency. This Court is of the considered view the Petitioner had established Prima facie case,

balance of convenience and irreparable injury and as such the Petitioner is entitled for the Petition prayer relief.

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

Dictated to the Steno-Typist, transcribed and typed by her, corrected and pronounced by me, in open court this, the 6th day of February 2025.

I Additional District Munsif,
Nagercoil.

Petitioner's side witnesses : Nil.

Petitioner's side documents :

Ex.P1	13.12.2017	Sale Deed executed by Arul Jerome infavour of the Petitioner bearing Doc. No. 3217/2017.
Ex.P2	27.01.2021	Kist receipt in the name of the Petitioner for fasali 1430.
Ex.P3	05.03.2018	Kist receipt in the name of the Petitioner for fasali 1427.
Ex.P4	05.03.2018	Chitta Adangal in the name of the Petitioner for Re.Sy. No. H8/4-1.
Ex.P5	10.03.2024	House tax receipt in the name of the Petitioner for the building bearing No. NMC 39/B3-1.
Ex.P6	08.07.2021	House tax receipt in the name of the Petitioner for the building bearing No. NMC 39/B3-2.
Ex.P7	-----	Approved plan issued by Nagercoil Municipal Corporation.
Ex.P8	11.12.2017	Kist receipt in the name of Arul Jerome for fasali 1427.
Ex.P9	-----	Photographs in 8 Nos with C.D. showing the schedule of Properties.
Ex.P10	02.10.2021	Complaint given by the Petitioner to Sub Inspector of Police, Nesamony Nagar.
Ex.P11	06.10.2021	Petition given by the Petitioner to the Superintendent of Police, Kanyakumari District.
Ex.P12	06.10.2021	Police complaint online receipt.
Ex.P13	22.02.1994	Pathway Agreement bearing Doc. No. 426 of 1994

Respondents' side witnesses and documents : Nil.

I Additional District Munsif,
Nagercoil.

I ADM, Nagercoil
Draft/Fair Order
I.A.No. 2/2021 in
O.S.No.206/2021.
Date: 06.02.2025.