

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

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

Friday, on this the 28th day of June 2024

I.A. No. 2 of 2023

in

O.S. No. 153 of 2023

P.Selvakani

... Petitioner/Plaintiff

-vs-

1. C.Lingapandian

2. L.Kathiravan

... Respondents/Defendants

This Petition came up before me on 05.06.2024 for final hearing in the presence of Mr. Lakshmikanth.G & B.Harikesavan, Advocate for the Petitioner/Plaintiff and Mr. T.K.Makesh, Advocate for the Respondents/Defendants and upon hearing the Petitioner's and Respondents' 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 Petitioner had filed the above petition under Order XXXIX Rule 1 and 2 CPC seeking interim injunction restraining the Respondents from disturbing the peaceful possession and enjoyment of the Petitioner in her shared household namely the Petition schedule property, till the disposal of the suit.

2. The Petitioner had stated that she had filed the above suit for permanent injunction, against the Respondent from evicting her from the Petition schedule property which is her matrimonial home and shared house hold. By employing forceful dispossession other than due process of law. The Petitioner had stated that her marriage with the 1st Respondent was solemnized on 12.11.1981 at her residence as per Hindu law and custom. After the marriage, she moved over to the 1st Respondent's parental house. Thereafter on 24.11.1994 the 1st Respondent purchased the Petition schedule property and renovated it. The Petitioner and the 1st Respondent started living independently in the Petition schedule property.

3. Since the Petitioner and 1st Respondent have not begotten any child, they adopted two female children namely Subratha Devi and Bharathi. The 1st Respondent continued his wayward life. As the Petitioner objected and questioned his illegal relationship with one Thanga Bai, the 1st Respondent deserted the Petitioner and her children and started living with the said Thanga Bai at Puviyoor Colony. The 1st Respondent filed O.S.No. 170 of 2018 against the Petitioner, claiming that the Petitioner's property was purchased, out of his money. The said suit was filed before the II Additional District Munsif Court, Nagercoil and was returned for being presented before appropriate Jurisdictional Court.

4. The Petitioner got his foster daughter namely Subratha Devi and Bharathi married during the year 2011 and 2019 and they are living at their respective matrimonial house at Kanagappapuram and Swamithoppu. The 1st

Respondent had non treated the Petitioner, he had not maintained the Petitioner. Further in order to wreck vengeance and evict the Petitioner, from the matrimonial house, the 1st Respondent had executed a Settlement Deed bearing Document No. 108 of 2023 Kottaram Sub Registrar Office in favour of the 1st Respondent's son the 2nd Respondent herein, withs recital against the true facts. On 04.09.2023 the 1st and 2nd Respondents along with some prospective buyer's surveyed the Petition schedule property. The same was questioned by the Petitioner. For which the 2nd Respondent and some persons, who accompanied them, warned that she should vacate the Petition schedule property, failing which, the Petitioner will be evicted forcefully and the property will be sold.

5. The Petitioner further stated that she is the married women having a right to live in her shared house hold. The Petition schedule property is matrimonial home, as such she cannot be thrown out. Her right in her matrimonial home is protected under Section 17 of the Protection of Women form Domestic Violence Act. If she is forcefully evicted, she will be put to irreparable loss and injury. Hence she had filed the above suit as well as the above interlocutory application.

6. The Respondents have filed memo adopting their written statement as counter in the above interlocutory application. The Respondents have pleaded that the Petitioner has not come before this Court with clean hands. The Respondents have admitted the Petitioner's claim as to her marriage with the 1st Respondent on 12.11.1981. The Respondents called upon the Petitioner to prove

that she had been residing in the Petition schedule property from January 1995. The Petitioner has no right to reside in the house and she had usurped all earning of the 1st Respondent and thrown him away from the Petition schedule property. The 1st Respondent is now a strawman and he is suffering from ailments and he could not maintain himself. The Petitioner has no right over the Petition schedule property. It was the absolute property of the 1st Respondent. The property comprised in Resurvey No. 312/5 Thamariakulam Village was purchased by the 1st Respondent, in the name of Petitioner, by utilizing his hard earned money on Trust. The Petitioner has no independent income to purchase the property. The 1st Respondent established a coir manufacturing factory in that property and constructed a building therein, with his own money.

7. The Petitioner's claim of purchasing that property out of her own income and savings and by selling her jewels is false. The 1st Respondent had spent the marriage expenses of the daughter. The Petitioner was living along with the step daughter Bharathi at Swamythoppu. Having extracted all his money and now the 1st Respondent is unable to earn money, the Petitioner chased away the 1st Respondent. The 1st Respondent had executed Settlement Deed in favour of the 2nd Respondent. It does not mean that he attempted to evict the Petitioner forcefully from the Petition schedule property. Since the 1st Respondent is the absolute owner, he is entitled to execute the Settlement Deed in favour of the 2nd Respondent. The Petitioner has no right to question the Settlement Deed. The Petition schedule property is not the matrimonial house.

No incident took place as alleged on 04.09.2023. It is her own imagination. The 2nd Respondent never threatened the Petitioner as averred by the Petitioner. The Petitioner has not approached this Court with clean hands. There is no cause of action of the above suit. This Court has no jurisdiction to try the above suit. Hence the Respondents prayed for dismissal of the above petition.

8. The Point for Consideration is whether the above petition is liable to be allowed or not?

9. The Respondents have admitted the marriage of the Petitioner with the 1st Respondent. The Respondents have not stated as if the matrimonial relationship between the Petitioner and the 1st Respondent was severed by any Judicial Process. The fact that the Petition schedule property was owned by the 1st Respondent and later settled on the 2nd Respondent is not in dispute. The Petitioner claimed to be in possession of the Petition schedule property, as shared household of the Petitioner, with the 1st Respondent and the Petitioner had claimed that the 1st Respondent had deserted the Petitioner. On the other hand, the Respondents have pleaded that the Petitioner had usurped all his earnings and later when the 1st Respondent was not able to earn, he was thrown out of the Petition schedule property.

10. The Respondents have also pleaded that the Petitioner is residing with her foster daughter Bharathi at Swamythoppu. Having pleaded so, the Respondents have also pleaded that the execution of Settlement Deed, does not mean that the 2nd Respondent had attempted to evict the Petitioner forcefully

from the Petition schedule property. Such pleadings made by the Respondents in their written statement, gives probability that the Petitioner is in possession of the Petition schedule property. As such the Petitioner's case is corroborated by the Respondents' pleadings. The Petitioner had established prima facie case. Regarding balance of convenience, it is stated that the Petitioner is aged 62 years and she do not have any biological children and she got her adopted children married and that she also claims that her husband the 1st Respondent herein had deserted her. In such circumstances the 1st Respondent and the 2nd Respondent is said to be residing at Door No. 17/127, Puviyoor Colony. Such being the case the balance of convenience is also in favour of the Petitioner.

11. The Respondents have pleaded that this Court has no jurisdiction to entertain the suit, as the dispute is in between the wife and husband and this Court Jurisdiction is barred by Family Court Act 1984, for which the learned counsel for the Petitioner had contented that as per the Dictim of the Hon'ble Supreme Court in order dated 15.10.2020 made in Civil Appeal No. 2483 of 2020 Satish Chander Ahuja -vs- Sneha Ahuja and Andhra Pradesh High Court Citation in Bharath Heavy Plates -vs- Vessels Ltd. Reported in 1986 ILLJ 145 AP, the civil rights could be adjudicated before this Court, since the suit is suit simplicitor for permanent injunction. Hence the suit is maintainable before this Court.

12. On perusal of the Complaint, the Plaintiff claim right over the Complaint schedule property in her capacity as the wife of the 1st Respondent. As such it

cannot be said the above suit is suit simplicitor for land. However the contention and objection made by the Respondent with regard to the Jurisdiction of this Court could be adjudicated at the time of Trial, since the issue raised i.e. matrimonial right of property right, have to be appreciated after recording evidence in the suit. Insofar as the above interlocutory application is concerned this Court is of the considered view, as the Petitioner being a women, if she is thrown out of the Petition schedule property, by unlawful means the irreparable injury that will be caused to the Petitioner could not be compensated in terms of money.

13. Though there is no prohibition for the 1st Respondent to execute the Settlement Deed in respect of his property in favour of the 2nd Respondent. As it is brought to the notice this Court that the Petitioner and 1st Respondent have already litigating with regard to another property in Thamaraikulam Village, there is probability that the Settlement Deed was executed in order to dispossess the Petitioner from the Petition schedule property. The Petitioner had established prima facie, balance of convenience and irreparable injury. Hence she is entitled for the petition relief.

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

Dictated to the Steno typist, transcribed and typed by her, in Computer corrected and pronounced by me in Open Court this, the 28th day of June, 2024.

Sd/-

Principal District Munsif,(FAC)

Nagercoil.

Petitioner 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 2023 in
O.S. No.153 of 2023
Date: 28.06.2024.
PDM Court, Nagercoil.