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IN THE COURT OF PRINCIPAL DISTRICT MUNSIF,
PADMANABHAPURAM.

Present: **Selvi.V.Viswatha, B.A.,LL.B(Hons),LL.M.,**
Principal District Munsif.(Full Additional Charge)
Wednesday the 25th day of August 2021
I.A.No.2 of 2021 in O.S No.61 of 2021

R.Chandran.

.. Petitioner/Plaintiff..

/ Vs. /

1. Shylin Shoba.(Minor)
represented by father and guardian
3rd respondent/3rd defendant Tamil Selvan.
2. Sharon.(Minor)
represented by father and guardian
3rd respondent/3rd defendant Tamil Selvan.
3. Tamil Selvan.

..Respondents/Defendants 1 to 3..

This petition is presented before me for final hearing, in presence of Mr. S.Alwin Vethamoni, learned counsel for the Petitioner and Mr.M.S.Moorthy, learned counsel for the Respondents. Upon hearing the counsel on both side and on perusal of the records stood over for consideration till this day, this court passed the following

ORDER

This petition is filed under Order 39 Rules 1,2 and Section 151 of Civil Procedure Code to restrain the respondents by an order of interim injunction.

2. Brief of petition facts is as follows:-

This petitioner/plaintiff has filed this suit seeking the relief of permanent injunction. It is stated that the plaint schedule property originally belonged to the plaintiff's father of Late Rajaian son of Chinnapillai Nadar under the will deed No.1/1964 dated 19.08.1964.The petitioner states that he had voluntarily executed a

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settlement deed No.1018/2021 dated:26.06.2021 out of his free will infavour of the petitioner. It is stated that the respondents 1 and 2 are the minor children of Late Mr.Rajaian's eldest son Mr.R.Tamil Selvan, the 3rd defendant herein. The petitioner states that the settler Mr.R.Rajaian executed the above said settlement deed infavour of the petitioner without reserving any power for revocation. It is stated that the settler being the father and the settle being his son the original settlement deed was retained by the plaintiff's father Mr.Rajaian. It is stated that the petitioner immediately acted upon and so the settlement deed has become final and irrevocable. Further it is stated that after the death of the petitioner's father on 05.08.2015 the petitioner got exclusive possession and enjoyment over the suit properties. It is stated that the petitioner being a mason by profession was employed abroad for sometime and taking advantage of his action the 3rd respondent has fraudulently took away the original settlement deed No.1018 of 2021 that was in custody of petitioner's father. It is stated that the petitioner demanded the 3rd respondent to return the said original settlement deed for effecting mutation. It is stated that because of that the petitioner is unable to produce the settlement deed dated 26.06.2021 executed by his father in favour of the petitioner. The petitioner states that the 3rd respondent has influenced the father of the petitioner to execute an unilateral cancellation deed No.1352 of 2007 dated 17.07.2007 revoking the settlement deed No.1018 of 2021 executed by him infavour of the plaintiff and on that date itself fraudulently obtained a sale deed No.1353 of 2007 dated 17.07.2007 infavour of the respondents 1 and 2 by causing undue influence. The petitioner states that Late.R. Rajaian had no manner of right to

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execute the above said cancellation deed and sale deed obtained by 3rd respondent. It is stated that the respondents 1 to 3 did not get any manner of right over the suit property. The petitioner states that the respondents are making illegal attempt to make permanent construction and altering the physical features of the suit property. Thus this petition is filed seeking ad-interim injunction.

3. Counter filed by the respondents in brief:-

The respondents states that the alleged settlement deed is a sham and colourable document created by the petitioner/plaintiff with undue influence and without free consent of the deceased Rajaian. It is stated that the settler has every right to revoke or cancel the settlement deed. It is stated that no mutation has been effected infavour of the petitioner for the past 20 years. The respondents states that the settlement deed was not in custody of the respondents and it is stated that they are bonafide purchasers of the value. The respondents states that the petitioner deserted his parents and not afforded anything for their basic needs and made them to suffere a lot and put them into starvation. It is stated that since the father was not in possession to maintain himself he sold 10 cents of land to the respondent by virtue of Sale Deed No.1353 of 2007 before the Karungal Sub Registrar Office. It is stated that the petitioner's father has every right to cancel the settlement deed and the sale between the deceased R.Rajaian and these respondents are legal and valid. It is stated that the respondents possession from the year 2006 and so the claim by the petitioner is barred by limitation. The respondents states that the suit is hit by estoppel, limitation, ouster and adverse possession. Thus the respondents states this petition is liable to be

dismissed.

4. Heard the counsel on both sides and perused the records stood over for consideration.

5. Now the point for consideration is whether the petition is liable to be allowed or not?

6. The petitioner states that the suit schedule property originally belonged to the petitioner's father of Late Rajaian son of Chinnapillai Nadar under the will deed No.1/1964 dated 19.08.1964. It is stated that the settlement deed No.1018/2021 dated 26.06.2021 was executed infavour of the petitioner. For clarity and brevity the relationships between the parties are explained.

7. The petitioner is the son of late R.Rajaian and the respondents 1 and 2 are the minor children of Late Mr.Rajaian's eldest son Mr.R.Tamil Selvan, the 3rd defendant herein. The petitioner states that the 3rd respondent fraudulently took away the original settlement deed No.1018 of 2021 which has been in the custody of his father immediately on the demise with malicious intention. It is stated that after the demise of the father on 05.08.2015 the petitioner got exclusive possession and enjoyment over the suit properties. It is stated that the petitioner being a mason by profession was employed at abroad and when he returned the original settlement deed to effect mutation. It is stated that on verification of encumbrance certificate on 20.04.2021 he had found that the 3rd respondent had influenced the petitioner's father Mr.R.Rajaian to execute an unilateral cancellation deed No.1352 of 2007 dated 17.07.2007 revoking the settlement deed No.1018 of 2021. It is stated that the sale deed No.1353 of 2007 dated 17.07.2007 executed infavour of the minor respondents 1 and 2 is

fraudulently obtained. Now the petitioner states that on 24.04.2021 the respondents tried to put up illegal construction and unauthorized permanent structures.

8. Resisting the same, respondents states that the petitioner deserted his parents failed to provided them with basic necessities and parents of the petitioners were starving and so the father of the petitioner late. R.Rajaian has sold 10 cents of his property to respondents 1 and 2 by virtue of sale deed No.1353 of 2007. Thus the respondents states that the sale between the petitioner's father and respondents are legal and valid as they are a bonafide purchasers for consideration. It is further stated that no undue influence is committed by this respondents.

9. The counsel for the petitioner relied on Ex.P.1 to Ex.P.7 and stated that the prima facie case , balance of convenience and irreparable loss rest with the petitioner. The counsel for the petitioner also stated that the respondent is trying to make construction in the suit property.

10. The counsel for the respondents relied on Ex.R.1 to R.6 documents were marked. The respondent states that the petitioner has no right in the property and states they are bonafide purchaser for consideration.

11. On perusal of the documents it is seen that the plaintiff's right is inchoate and unripe at this stage. The scope of interference being very limited court will not delve into the matter and conduct mini trial. The purpose of interim injunction is very limited within the teeth under Order 39 Rules 1 and 2 CPC. The purpose of interim injunction is to ensure prima facie protection. Here the petitioner relies on Ex.P.2 and states that the settlor has no right to cancel the Settlement Deed. This is a point for

determination in trial and in this petition roving enquiry or mini trial cannot be conducted. The petitioner is not found to be in possession of the suit property as well. The alleged construction remains as assertion and not supported by documents. Having not proved that the prima facie case, balance of convenience and irreparable loss does not tilts in favour of petitioner. In the light of the discussion made supra, the petitioner is not entitled for the relief sought for.

12. In the result, this petition is dismissed. No costs.

Dictated to the Steno-Typist directly, typed by her in computer, corrected and pronounced by me in open court, on this 25th day of August 2021.

Principal District Munsif,
Padmanabhapuram.(FAC)

Petitioner side witnesses:-Nil

Petitioner side documents:-

- Ex.P.1. 19.08.1964 : Tamil and Malayalam copy of Will Deed executed by Chinnapillai Nadar infavour of Raju Nadar, Rajayyan Nadar, Muthaiyan Nadar. Will Deed No.1/1964.
- Ex.P.2. 26.06.2001 : Copy of Settlement deed executed by Rajayyan infavour of Chandran. Settlement Deed No.1018/2001.
- Ex.P.3.17.07.2007 : Copy of Cancellation Deed . Cancellation Deed No.1352/2007.
- Ex.P.4.17.07.2007 : Copy of Sale Deed executed by Rajayyan infavour of Tamilselvan. Sale Deed No.1353/2007.
- Ex.P.5 27.04.2021 : Resurvey Patta. Patta No.11438.
- Ex.P.6 27.04.2021 : Resurvey Patta. Patta No.14359.
- Ex.P.7 28.04.2021 : Encumbrance Certificate.(Copy)

Respondents side witnesses:- Nil.

Respondents side documents:-

- Ex.R.1. 15.02.2017 : Computer Patta. Patta No.14041.
- Ex.R.2. 15.02.2017 : Land tax receipt.
- Ex.R.3. 02.11.2011 : Patta transfer order.
- Ex.R.4. 25.05.2021 : Certificate from Village Officer, Karungal Village.
- Ex.R.5. 27.11.2002 : Copy of Birth Certificate in the name of T.Shajilin Sayba.
- Ex.R.6. 25.05.2021 : Land tax receipt.

PDM(FAC)

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PDMC Padmanabhapuram.

IA.No.2/21 in OS.No.61/21.

Draft/Fair Order:

Dt: 25.08.2021.