

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF
PADMANABHAPURAM.

Present: Thiru.A.Maruthupandi, B.Com., B.L.,
Principal District Munsif.

Tuesday, the 23rd day of August 2022

I.A No.01 of 2022

in

O.S No.65 of 2022

Kamalam

.. Petitioner/Plaintiff

/ Vs. /

1. Mary
2. Sajin
3. Asha

.. Respondents/Defendants

This petition is coming before me for final hearing, in the presence of Mr.P.Vincent, learned counsel for the petitioner and Mr.F.Shajin Raj, learned counsel for the 1st respondent. The respondents-2 and 3 called absent and set ex-parte. Upon hearing the counsel on respondent 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 Rule 1 and 2 and Section 151 of the Civil Procedure Code for getting ad-interim injunction restraining the respondents/defendants, their men and agents from disturbing the plaintiff's peaceful enjoyment of the suit 'B' schedule property as pathway to 'A' schedule property till the disposal of the suit and for render justice.

2. THE AVERMENTS IN THE PETITION IN BRIEF :-

The plaint schedule properties originally belonged to one Saminathan. He had a property for an extent of 7 cents in Re-Survey No.178/11. The said Saminathan sold 5 cents to the husband of 1st respondent on the road side. While the said 5 cents sold the said Saminathan reserving a pathway rights to the remaining 2 cents and the right of pathway also mentioned the sale deed No.1956/1993 in which the said Saminathan and the husband of 1st respondent are parties. The pathway is having 3 feet width and 500 feet in length and it is described as 'B' schedule property. The remaining 2 cents sold by the said Saminathan in favour of petitioner herein by a way of sale deed No.2031 of 1993. The 2 cents described as 'A' schedule property and the petitioner has been enjoying the 'A' schedule property. The 'B' schedule property is used by her to access the 'A' schedule property from the date of purchasing the 'A' schedule property till the death of husband of 1st respondent and there is no alternative pathway to access the 'A' schedule property. After the death of 1st respondent the said 5 cents devolved between the respondents and then the respondents making hindrance to the petitioner and her family members from using the 'B' schedule property. The last such hindrance took place on 12.06.2022. The said pathway rights already given in the sale deed of the respondents, so the respondents have no manner of rights to make hindrance or obstruct the 'B' schedule pathway in any way and in the meantime the respondents are continuously disturbing the

petitioner from using the same so this petition has been filed for getting an-interim injunction restraining the respondents from disturbing the plaintiff's peaceful possession and enjoyment of the suit schedule property.

3. THE AVERMENTS IN THE COUNTER FILED BY THE 1st RESPONDENT IN BRIEF :-

The respondent in his counter stated that the petition is not maintainable under facts and law. There is a provision in document No.1956/1993 dated 04.11.1993 that the purchaser should not obstruct the plaintiff from going to the property through the northern side of the property. The above said Sale deed right of way alone is provided to get ingress and egress to the 'A' schedule property. The 'B' schedule property scheduled in the plaint is misleading and against the provisions made in the sale deed in favour of deceased Rajendran, husband of the 1st respondent/defendant. There is not 'B' schedule property available at the spot. The petitioner/plaintiff is having only right of pathway through the 1st respondent's property. Hence this petition is liable to be dismissed.

4. POINTS FOR DETERMINATION :-

Whether the petitioner is entitled to the relief as prayed for or not?

5. DISCUSSION AND ANALYSIS :-

Respondent's side Argued. Records perused carefully.

(i) The petitioner/plaintiff stated that one Saminathan had a property for an extent of 7 cents in Re-Survey No.178/11. The said Saminathan sold 5 cents to the husband of 1st respondent/1st defendant on the road side. While the said 5 cents sold, the said Saminathan reserving a pathway rights to the remaining 2 cents and the right of pathway also mentioned the sale deed No.1956/1993 inwhich the said Saminathan and the husband of 1st respondent are parties. The pathway is having 3 feet width and 500 feet in length and it is described as 'B' schedule property in the petition schedule mentioned property.

(ii) The petitioner/plaintiff further stated that the remaining 2 cents sold by the said Saminathan infavour of petitioner/plaintiff herein by a way of sale deed No.2031 of 1993. The 2 cents described as 'A' schedule property and afterthat the petitioner/plaintiff has been enjoying the 'A' schedule property. The 'B' schedule property is used by her to access the 'A' schedule property from the date of purchasing the 'A' schedule property till the death of husband of 1st respondent/1st defendant and there is no alternative pathway to access the 'A' schedule property. After the death of husband 1st respondent/1st defendant the said 5 cents devolved between the respondents and then the respondents/defendants making hindrance to the petitioner/plaintiff and her family members from using the 'B' schedule property. The last such hindrance took place on 12.06.2022.

(iii) The petitioner/plaintiff further stated that the said pathway rights already given in the sale deed of the respondents/defendants, so the respondents/defendants have no manner of rights to make hindrance or obstruct the 'B' schedule pathway in any way and in the meantime the respondents are continuously disturbing the petitioner from using the same, hence this petition.

(iv) On perusal of Sale deed No.1956 of 1993 it is found that the husband of 1st respondent/1st defendant and father of 2nd and 3rd respondents/defendants purchased 5 cents out of 7 cents from one Saminathan on the road side. While the said sale deed was executed a pathway rights to the remaining 2 cents given in the said Sale deed where as the petitioner/plaintiff purchased the petition 'A' schedule property by a way of Sale deed 2031 of 1993 i.e., the remaining above said 2 cents from the said Saminathan on 18.11.1993 from then the petitioner has been using the said pathway without any hindrance and no dispute arise between the petitioner and the said husband of 1st respondent/1st defendant and father of 2nd and 3rd respondents/1st defendant for the past 28 years, but now petitioner approached this court after the death of the husband of 1st respondent/1st defendant that the respondents 1 to 3 are making hindrance and disturbing the petitioner from using the 'B' schedule property as pathway to 'A' schedule property.

(v) In the light of discussion made supra, it is found that prima facie case is made out and balance of convenience also in favour of petitioner/plaintiff and if an ad-interim injunction granted on 17.06.2022 is not made absolute there is more chance for irreparable loss and damage to the petitioner/plaintiff because of the Sale deed No.1956 of 1993 which is stood in favour of husband of 1st respondent/1st defendant and father of 2nd and 3rd respondents/2nd and 3rd defendants is speaking the pathway rights of purchaser of remaining 2 cents in Re-Survey No.178/11 and moreover the petitioner/plaintiff stated that she has no alternative pathway to access the petition 'A' schedule property from petition 'B' schedule property, hence in the interest of justice it is just and necessary to allow this petition and moreover if this petition is allowed no prejudice would be caused to respondents herein.

6. DECISION:

In the result, an ad-interim injunction granted on 17.06.2022 is made absolute till the disposal of main suit.

Dictated to the Steno-Typist directly, typed by her in computer, corrected and pronounced by me in open court, on this 23rd day of August, 2022.

Principal District Munsif,
Padmanabhapuram.

PDMC, Padmanabhapuram.
I.A.No.01/2022 in O.S.No.65/2022
Draft/Fair Order:
Dt: 23.08.2022.