

**IN THE COURT OF THE DISTRICT MUNSIF,
ERANIEL.**

**Present: Thiru. R.Karthikeyan, B.A., B.L. (Hons).,
District Munsif, Eraniel. (F.A.C.)**

Thursday, the 21st day of November 2024.

I.A.No.3/2024

in

O.S.No.40/2024

M.Lawrence Kennady

... Petitioner/Plaintiff

Vs.

1. Deva Sahayam
2. Maria Yesudhasan

... Respondents/Defendants

This petition is coming before me for final hearing on 03.10.2024 in the presence of Thiru. A.John Soundar, learned counsel for the Petitioner/Plaintiff and Thiru. K.Sahayadhas, learned counsel for the Respondents/Defendants. Upon hearing the both sides 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 XXXIX Rules 1 and 2 and Section 151 CPC seeking an order of Interim injunction restraining the Defendants 1 and 2/Respondents 1 and 2 and their men and agents from blocking or causing any kind of obstructions in using the 'B' schedule property as pathway by the

Plaintiff and the inmates of his house for their free ingress and egress till the final disposal of the suit.

2. THE AVERMENTS IN THE PETITION IN BRIEF :-

i) The Petitioner had stated that the Plaint 'A' schedule property is the family property of the Plaintiff and others and the Plaintiff has obtained it by a partition deed dated 07.04.1999 as per Document No. 469/1999 of Colachel Sub Registrar's office. The Plaint schedule property is the 'C' schedule property in the said partition deed. From the date of the partition deed the Plaintiff and his mother were in peaceful possession and enjoyment of the property as an absolute owner. Plaintiff's mother died on 27.05.2011. Now the Plaintiff enjoying the same is in a residential house.

ii) The 'B' schedule property is a pathway used for the free ingress and egress. The Plaintiff and his predecessors in interest have used it even prior to the partition deed, from the boyhood stage of the Plaintiff. A rough plan showing the position of the Plaint A and B schedule property is annexed along with the plaint. The Plaintiff have no other alternative pathway for the free ingress and egress to go for his house. The Panchayat pipe line of the Plaintiff's house goes through the 'B' schedule pathway.

iii) The Plaintiff and the inmates of this house are using the 'B' schedule pathway from 07.04.1999 continuously, without any interruption of the Defendants or anybody else. Since the Plaintiff have no other pathway, the Plaintiff prescribed the right over the 'B' schedule property by way of easement of necessity. By the inducement of the Defendants 1 and 2, the 1st Defendant's son severely attacked the Plaintiff. The Plaintiff has reported the matter before the Colachel Police and the registered a case against the 1st Defendant's son as Crime No. 84/2024.

iv) The Defendants 1 and 2 and their men are threatening that they will close the 'B' schedule property pathway. So that the Plaintiff and his inmates will not come out of their house and nobody can go to their house. Therefore the Plaintiff is urgently filing this suit. Hence the Petitioner prayed for interim injunction restraining the Defendants 1 and 2 and their men and agents from blocking or causing any kind of obstructions in the plaint 'B' schedule pathway in using the same as pathway till the final disposal of the suit.

3. THE AVERMENTS IN THE COUNTER FILED BY RESPONDENTS/DEFENDANTS IN BRIEF:-

i) All the averments contained in the affidavit except that those are

specifically admitted or otherwise dealt hereunder shall be deemed to be denied by these Respondents.

ii) The Respondents/Defendants have submitted that the Plaint B scheduled property is a strip of land, which is part and parcel of the property with an extent of 11.125 cents originally belonged to the Respondents' father. The Respondents' father Savarianandhan had put up a fence with coconut leaves and a wooden stick gate on the south east corner of the property, had enjoyed the same as owner. Subsequently, the Respondents' father has executed Sale Deed No.755/1999 in favour of the 2nd Respondent in respect of eastern 5.563 cents by leaving 5 links on the Southern side for the access of the remaining extent of property on the west and executed another Sale Deed No.1434/2002 in favour of the 1st Respondent in respect of remaining western 5.563 cents.

iii) Subsequently, the 2nd Respondent has constructed a house in his property touching the alleged 'B' scheduled property in the year 2003. The 2nd Respondent has provided five windows and sun shades on the southern wall of his house facing the alleged B scheduled property. When the said windows of the 2nd Respondent's house are opened, it will stand project on the alleged 'B' scheduled pathway. The western property touching the 2nd Respondent is more than 6 feet lower in level than the house of the 2nd Respondent, hence

the 2nd Respondent has demolished his old dilapidated on the west has raised the western side touching the compound wall with rubbish from his land just to strengthen the compound wall in the western side of his house. The alleged 'B' scheduled property on the southern side of the 2nd respondent is in exclusive possession and enjoyment of the respondents alone.

iv) The Respondents further submitted that the 2nd Respondent along with his wife, son and unmarried daughter is living in the house with the alleged 'B' scheduled property, which is lying together. The windows on the southern wall of the 2nd Respondent's house are facing and touching the alleged 'B' scheduled property and projecting on the alleged 'B' scheduled property, the patta land of these respondents. The windows on the southern wall of the 2nd Respondent's house are always opened for air and light. The compound wall available on the southern side of the 'B' scheduled property is protecting the privacy of the 2nd Respondent and his family members. The Petitioner is a stranger to the Respondents' family and he has no connection to the Respondents' property including the alleged B scheduled property.

v) The Petitioner or his family members or his predecessors in interest has never used the alleged 'B' scheduled property as pathway for their free access their property at any point of time as alleged by the Petitioner. If any

order is passed against these Respondents in respect of the alleged 'B' scheduled property, the registered holding of these Respondents of the 2nd Respondent, the privacy of his family members will be badly affected and the house of the 2nd Respondent will not be safe without the gate on the southern side, the 'B' scheduled property. Under such circumstances, the Petitioner is not entitled for any relief or order from this Court as sought for in the petition.

vi) Further it is pertinent to mention here that privacy is a fundamental right guaranteed under Art.21 of the Constitution of India. Herein, the privacy of the Respondents is affected by the false and most frivolous claim of the Petitioner. Under such circumstances, if an order is passed in favour of the Petitioner in respect of the so called 'B' scheduled property, which is the registered holding of these Respondents, the Respondents who are the absolute owners in possession and enjoyment will be put into irreparable loss and mental agony, since the privacy of the 2nd Respondent and his family members will be affected.

vii) The Respondents further submitted that when the gate was in open, the Petitioner brought the Advocate Commissioner to the suit scheduled properties in an urgent manner without notice to these Respondent, with an oblique motive to fulfil his malafide intention of creating the pathway in the

Respondents' property has influenced the Advocate Commissioner to file a false preliminary report. It is learnt that on 06.06.2024 at around 7.30 p.m it was heavy raining, the gate was opened the Avocate Commissioner has visited the alleged 'B' scheduled property and has filed a one side report against the facts and lie of the alleged 'B' scheduled property. Hence it is clear that the interim report filed by Advocate Commissioner is against the real facts and nature of the 'B' scheduled property, as such the same will not bind these Respondents in any manner. The Respondents are taking steps to set-aside the ex-parte interim report filed by the Commissioner.

viii) The alleged 'B' scheduled property is the absolute property of the Respondents. The Respondents are in exclusive possession and enjoyment of the alleged 'B' scheduled property as per the Sale Deeds executed by their father Savarinandhan. Hence the Petitioner is not entitled to get any interim order against the real owners, the Respondents lawfully from the Court. The Petitioners by suppressing the real and material facts, have approached this Court with tainted hands as well as with false averments, to create pathway in the alleged 'B' scheduled property from the lawful owners, the Respondents. The schedule of property and the rough sketch produced by the Petitioner are against facts and lie of properties and the same is misleading. The petition is frivolous and vexatious one and as such the Petitioner is not entitled for any

order or relief from the Court against the Respondents. Hence the Respondents prayed for dismissal of the above petition.

4. POINTS FOR DETERMINATION :-

Whether the Petitioner/Plaintiff is entitled to the relief as prayed for or not?

5. DISCUSSION AND ANALYSIS :-

i) Heard both sides and records perused carefully. Perused the Exhibits adduced on both sides. Petitioner submits that plaint 'A' schedule property is family property of the plaintiff and has obtained it by a partition deed dated 07.04.1999 as per the document No 469/1999. The 'B' schedule property is a pathway used by the plaintiff and is predecessors as per the partition deed from the boy good stage of the plaintiff. Plaintiff counsel also submitted that plaintiff have no other alternative pathway for the free ingress and egress for his house. The plaintiff and inmates of his house were using the 'B' schedule pathway from 07.04.1999 continuously without any interruption of defendants.

ii) The learned counsel of petitioner/ plaintiff that petitioner has no other pathway and claims the 'B' schedule property as easement of necessity. On the side of respondent learned counsel submitted that 'B' schedule property is not in possession and enjoyment of the petitioner at any point of

time. The 'B' schedule property is the private patta land of respondent to access there properties situated on the western side of 2nd respondent house there is no pathway on the ground as alleged by petitioner to access his house from the road. The rough plan annexed with the plaint is portayed by petitioner for his convenience on filed the suit fraudulent motive to create a pathway in the patta land of respondent. 'B' schedule property is a strip of land which is part and parcel of property with an extent of 11.125 cents. Originally belongs to the father of this respondent. The compound wall available southern side of 'B' schedule property is protecting the privacy of 2nd respondent on his family members. Petitioner is a stranger to the family of respondents and allowing this petition by granting temporary injunction to use the 'B' schedule property is common pathway will affect the rights of the respondents over their patta land and will affect the privacy of the respondents.

iii) On perusal of the commissioner report it is observed that no other alternative pathway available to plaintiff to reach this house from the road except the plaint 'B' schedule pathway. It is to be clarified here that at the stage of disposal of an interim injunction application the question of right in the disputed land cannot be gone into by the court nor the same is relevant for the purpose of disposal of interim application in as much as the rival claims as to the rights and title of the parties in the disputed land can be decided at

the trial and not at the stage of disposal of interim injunction application. An interim injunction application as to be decided based on the possession of the parties over the disputed land. It is a settled principle of law that while deciding the order 39 Rule 1 and 2 petitioner, the court has to consider the following :

- 1) Whether the plaintiff has made out a prima facie case;
- 2) Whether the balance of convenience is in favour of the plaintiff; and
- 3) Whether the plaintiff will suffer irreparable loss or injury if an order of injunction is not passed.

iv) The present case the burden to prove that the petitioner has been in to prima facie possession and enjoyment over the suit 'B' schedule property is on the petitioner and to discharge the burden, petitioner filed on affidavit with bundle of facts as to enjoyment over the 'B' schedule property. On the petitioner side the following Exhibits were marked. The Ex.P1 is a certified copy of partition deed. The Ex.P2 is a Computerized Patta. The Ex.P3 is a original land tax Receipt, The Ex. P4 is an original land tax Receipt. The Ex.P5 is an original land tax Receipt. The Ex.P6 is an original land tax Receipt. The Ex. P7 is an original land tax Receipt. The Ex. P8 is an original house tax Receipt. The Ex. P9 is an original house tax Receipt. The Ex. P10 is an original house tax Receipt. The Ex. P11 is an original house tax Receipt.

The Ex. P12 is an original house tax Receipt. The Ex. P13 is an original house tax Receipt. The Ex. P14 is an original house tax Receipt. The Ex. P15 is an original Water tax Receipt. The Ex. P16 is an original Water tax Receipt. The Ex.P17 is an original water tax Receipt. The Ex. P18 is an original water tax Receipt. The Ex. P19 is an original water tax Receipt. The Ex. P20 is an original water tax Receipt. The Ex. P21 is an original Electricity bill Receipt. The Ex. P22 is an original Electricity bill Receipt. The Ex. P23 is an original Electricity bill Receipt. The Ex.P24 is an original Bill Payment Receipt. The Ex. P25 is a copy of Memorandum Relating to Deposit of Title Deeds. The Ex. P26 is an original Photos. The Ex. P27 is an Original CD. The Ex. P28 is a copy of aadhar card. The Ex. P29 is a rough plan. The Ex. P30 is a copy of First Information Report. The Ex. P31 is an original photos and copy of Police complaint letter. The Ex. P32 is a petition receipt. The Ex. P33 is a Petition to the District Collector, Kanyakumari District. The Ex. P34 is a Memorandum. The Ex. P35 is an Original Photos. The Ex. P36 is a Petition to the District Collector, Kanyakumari District. The Ex.P37 is an Original Photos. The Ex.P38 is a complaint copy of superintendent of police. The Ex.P39 is an Original Photos. The Ex.P40 is an Original Pen Drive. The Ex.P41 is a paper publication.

v) On the Respondents side the following Exhibits were marked. The

Ex.R1 is a copy of settlement deed. The Ex.R2 is a copy of Memorandum relating to deposit of title deeds. The Ex.R3 is an original photos with CD. The Ex.R4 is a Police complaint with on line acknowledgment .

vi) On perusal of the above exhibits this court filed its challenging to draw a conclusion regarding the petitioner apparent prima facie enjoyment of 'B' schedule property since respondents submits the settlement deed dated 25.03.2015, Mortgage deed, Photo copies, Police complaint dated 05.08.2024, an order of *Hon'ble Hight court of Madras 2024 (2) LW 350, 2019 (2) MWN (Civil) 336, 2017 (3) LW 585.*

vii) Since, the petitioner claims the 'B' schedule pathway as easementary of necessity, and there is no other alternative pathway for ingress and exgress to the petitioners property . Though respondent also raised objection that there is other pathway to access the petitioners house other then 'B' schedule property. On 27.09.2024 objection against commissioner report was filed by Advocate Mr. K.S. Sahayadhas stating the above reason that there is another pathway to petitioner house other then 'B' schedule property and 'B' schedule property is actually belong to respondents through their patta.The existence of alternative pathway can be decided only after the entire trial and petitioner claims interim injunction till the disposal of the case as the petitioner and his family members were undergoing severe hardships.

Viii) Based on the above both sides exhibits and both side arguments considering, the nature and circumstances of the petition and records of the both sides, since petitioner has established the requirements to claim interim injunction to access the existing pathway. Thus Petitioner satisfied this court that he has prima facie possession and enjoyment over 'B' schedule property and failing to allow this petition will cause irreparable loss to petitioner. In the interest of justice this court is inclined to grant temporary injunction .

6. DECISION :-

In the result, this petition is allowed. No costs.

Dictated to the Steno-Typist, transcribed and typed by her in Computer, corrected and pronounced by me in Open Court this, the 21st day of November, 2024.

District Munsif (FAC),
Eraniel.

Petitioner side witnesses :-

Nil

Petitioner side documents :-

Ex.P1	07.04.1999	Certified copy of Partition Deed
Ex.P2	04.06.2024	Computerized Patta
Ex.P3	05.01.2004	Original land tax Receipt
Ex.P4	26.01.2007	Original land tax Receipt
Ex.P5	26.11.2013	Original land tax Receipt

Ex.P6	10.02.2022	Original land tax receipt
Ex.P7	29.04.2024	Original land tax Receipt
Ex.P8	12.02.2000	Original House Tax Receipt
Ex.P9	12.02.2000	Original house Tax Receipt
Ex.P10	02.10.2007	Original House Tax Receipt
Ex.P11	01.09.2016	Original house Tax Receipt
Ex.P12	26.10.2021	Original house Tax Receipt
Ex.P13	11.11.2022	Original house Tax Receipt
Ex.P14	28.08.2023	Original house Tax Receipt
Ex.P15	06.02.2017	Original Water bill Receipt
Ex.P16	23.01.2018	Original Water bill Receipt
Ex.P17	19.01.2023	Original Water bill Receipt
Ex.P18	07.11.2023	Original Water bill Receipt
Ex.P19	19.12.2023	Original Water bill Receipt
Ex.P20	18.04.2024	Original Water bill Receipt
Ex.P21	10.08.2008	Original Electricity bill Receipt
Ex.P22	03.08.2021	Original Electricity bill Receipt
Ex.P23	03.06.2022	Original Electricity bill
Ex.P24	02.08.2024	Bill Payment Receipt
Ex.P25	13.11.2020	Memorandum Relating to Deposit of Title Deeds
Ex.P26	---	Photographs
Ex.P27	---	C.D.
Ex.P28	---	Aadhar Card
Ex.P29	---	Rough Plan
Ex.P30	21.04.2024	FIR
Ex.P31	17.06.2024	Petition Receipt with Photos
Ex.P32	26.06.2024	Petition Receipt
Ex.P33	27.06.2024	Petition to the District Collector, Kanyakumari District.
Ex.P34	05.07.2024	Memorandum
Ex.P35	---	Photos

Ex.P36	02.08.2024	Petition to the District Collector, Kanyakumari District.
Ex.P37	---	Photos
Ex.P38	05.08.2024	Complaint copy of superintendent of police.
Ex.P39	---	Photos
Ex.P40	---	Pen Drive
Ex.P41	06.08.2024	Paper publication

Respondents side witnesses :-

Nil

Respondents side Documents :-

Ex.R1	25.03.2015	Certified copy of Settlement Deed
Ex.R2	13.11.2020	Memorandum Relating to Deposit of Title Deeds
Ex.R3	--	Original Photos with C.D.
Ex.R4	05.08.2024	Original Police Complaint with online acknowledgment .

District Munsif (FAC),
Eraniel.

**D.M.Court, Eraniel.
I.A.No.3/2024 in
O.S.No.40/2024
Draft/Fair Order
Dated: 21.11.2024.**