

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

Present: **Thiru. A. Maruthupandi, B.Com., B.L.,**  
District Munsif, Eraniel. (F.A.C.)

Friday, the 21<sup>st</sup> day of June 2024

**I.A.No.03/2022**

**in**

**O.S.No.28/22**

T.Jegan,  
S/o.Thankaiya Nadar,  
Rep. by his Power Holder  
wife Janaki.

.. Petitioner/Plaintiff

Vs.

1. M.Krishnan Nadar,  
S/o.Muthu Nadar,

2. Thangam,  
W/o.Krishnan Nadar.

.... Respondents/Defendants

This petition is coming before me for final hearing in the presence of Mr.C.S.Lenin, learned counsel for the Petitioner and Mr.R.Jeyakumar, learned counsel for the Respondents and on perusal of the case records and having stood over for consideration till this day, this court delivered the following

**Order.**

This petition is filed under Order 39, Rules 1 and 2 and Section 151 of the Civil Procedure Code, 1908 to grant an order of ad-interim injunction restraining the respondents/defendants 1 &2 their men, agents

and anybody claiming under them from making any constructions or causing any manner of obstructions or act of waste over the petition 'B' schedule pathway till the final disposal of the suit.

**2. THE AVERMENTS IN THE PETITION IN BRIEF:-**

(i) The petitioner herein and the power of Attorney of the plaintiff and as such he well aware of the facts of the case. She submit that presently her husband is working at Middle-East counry, hereby executed a Power of Attorney dated 31.07.2021 in favour of him to do certain acts on his behalf morefully set-out in the power deed. The above suit is filed seeking permanent injunction restraining the respondents/defendants 1 & 2 from blocking the petition 'B' schedule property to reach the petition 'A' schedule property. Originally the petition 'A' schedule property and more area comprised in Re-Survey No.262/15 measuing to an extent of 23.000 cents belonged to one Chelliah Nadar. In the year 1975, the Chellaiah Nadar executed a Settlement Deed No.3271/1975 in favour of his daughters viz. Gandhimathi Bai settling the whole extent on the file of the SRO , Eraniel. Eversince from the date of settlement, the settlee Gandhimathi Bai was in possession and enjoyment over the property and revenue records

were also mutated in her name. While so, on 20.03.1989 Gandhimathi Bai sold an extent of 3.750 cents out of 23 cents to her brother Raj Mohan registered as Sale Deed No.584/1989 on the file of the SRO Eraniel. Likewise Gandhimathi Bai also sold an extent of 3.750 cents out of 23 cents to her another brother viz. Nesamoney registered as Sale Deed No.586/1989 on the file of the SRO, Eraniel. Thus both Raj Mohan and Nesamony derived title to an extent of 7.500 cents in Resurvey No.262/15 and in possession and enjoyment of the property without any obstacles.

(ii) On 01.04.2009 both sold the property jointly along with pathway right to her husband registered as Sale deed No.1201/2009 before the SRO Eraniel which is the petition 'A' schedule property. In the petition 'A' Schedule property she have construed a small room with hollow bricks for her own use and enjoyment. She submit that the near Mottavilai bus stop on the National Highway, a tar road runs towards north to south called as Mottavilai – Nettancode Road. To have ingress and egress to the petition 'A' schedule property, on the eastern side of Mottavilai – Nettancode Road a pathway measuring to an extent of 3 feet runs towards east, further turns north and thereby reaching the petition 'A' schedule property. The said pathway is the petition 'B' schedule property which measures approximately to an extent of 1 cent in Resurvey No.262/15 of

Kurunthencode 'A' village. From the date of purchase of the petition 'A' schedule property to till date the predecessor, herself and family members are using the petition 'B' schedule property. On the northern side of the petition 'B' schedule property the vendor Gandhimathi Bai sold an extent of 6,000 cents to the 1<sup>st</sup> Respondent / 1<sup>st</sup> Defendant – Krishnan Nadar registered as Sale deed No.1017/1986, dated 17.04.1986 on the file of the S.R.O. Eraniel. It learnt that the 2<sup>nd</sup> respondent / 2<sup>nd</sup> defendant who is the none other than the wife of the 1<sup>st</sup> respondent / 1<sup>st</sup> defendant also owns a property on the western side of the 1<sup>st</sup> respondent / 1<sup>st</sup> defendant's property. The respondents / defendants 1 & 2 merged the two properties into single plot compounded on all four sides.

(iii) She submit that the 1<sup>st</sup> respondent / 1<sup>st</sup> defendant also purchased a property in Resurvey No.262/18 to an extent of 2 cents registered as Sale deed No.1031/1986 on the file of the S.R.O. Eraniel situated on the south side of the petition 'B' schedule property. Thus herself and the respondents / defendants 1 & 2 are using the 3 feet pathway for more than decades together without any restrictions. It appears that on the starting point of the petition 'B' schedule property the erstwhile owner's viz. Varuvel Nadar & Vaidhiyanathan left each 1.5 sq. Feet totaling to 3 feet in width and both constructed compound wall on all four sides. As being the

position the respondents/defendants 1 & 2 in the last week of May 2022 attempted to close the petition 'B' schedule pathway by putting a compound wall in between the pathway.

(iv) In this regard, she preferred a complaint on 27.05.2022 before the Superintendent of Police, Nagercoil requesting to take appropriate action against defendants 1 & 2. The said complaint was forwarded to the Eraniel Police Station, for enquiry registered as CSR No.646/2022, dated 11.06.2022. In the enquiry we both parties agreed to measure our respective properties according to their documents and the existing position on ground and the petition was disposed off in the above terms. She submit that as the facts are so, on 25.06.2022 she was called by the Eraniel Police Station, Police officials to attend for the enquiry to the complaint given by the respondents/defendants 1 & 2. Further she came to know that the 2<sup>nd</sup> respondent / 2<sup>nd</sup> defendant already filed a complaint before the Superintendent of police, Nagercoil for necessary action. In compliance to that she appeared or enquiry at 10 A.M. before the Eraniel Police Station, but the respondents/defendants 1 & 2 never attended for the enquiry and hence the enquiry stands adjourned to 29.06.2022. Taking absence of him in the area, the defendants 1 & 2 on 25.06.2022 again attempted to close the petition 'B' schedule property which was also prevented by the timely

intervention of himself and the relatives. When she questioned the illegal acts of the respondents/defendants 1 & 2 both boldly informed that their daughter is working as Inspector of Police before CCIW and they can achieve their goal at any costs. Now the enquiry stands posted to 06.07.2022.

(v) She submit that the respondents/defendant's daughter will influence the police officials to act accoring to their wish and desire. The pettion 'B' schedule property is a clear cut pathway and no one have any right over it to claim as their absolute property. The respondents / defendants 1 & 2 and their henchman at any time achieve their illegal object by taking law into their own hands. The respondents/defendants 1 & 2 have no manner of right to construct the compound wall in between the pathway to block herself in using the petition 'B' schedule pathway. In the said circumstances it is highly necessary that the respondents / defendants 1 & 2 be restrained by an order of ad-interim injunction by this court. She has got strong prima facie case and the balance of convenience is in her favour to protect the right over the petition 'B' schedule property. Unless the order of ad-interim is granted by this court She will be put to irreparable loss and hardships.

**3. Counter filed on the side of Respondents/Defendants:-**

(i) All the averments and allegations stated in the plaint are denied as false except those that are specifically admitted herein under. The averments stated in para No.1 of the plaint is concerned, the defendants categorically and emphatically denied as false. It is submitted that, the defendants have no specific remarks about the plaint 'A' schedule property. However, the plaintiff has to prove the same through respective documents. The plaintiff has a strict burden to prove the plaint 'A' schedule property and other facts stated in the above para with sufficient documents. Unless prove the same, adverse inference could be drawn against the plaintiff. It is significant to state that the 'A' schedule property is situated in ReSy No.262/15 of Kurunthencode Village which is not in dispute in this suit.

(ii) The averments stated in para No.2 of the plaint is concerned, the defendants are categorically and emphatically denied as false. It is submitted that the alleged plaint 'B' schedule property is imagined which is invented by the plaintiff with an ulterior and oblique motive. The alleged plaint 'B' schedule property is created by the plaintiff in order to get unlawful gain. Indeed, the plaintiff has purchased the plaint 'A' schedule

property from one Nesamony and Rajamohan by virtue of sale deed as document No.1201/2009 dated 01.04.2009 of Sub Registrar's office at Eraniel. Originally, the plaint 'A' schedule property belongs to one Gandhimathi Bai who sold 3.750 cents to the vendor of the plaintiff Rajmohan as document No.584/1989 dated 20.03.1989. Another 3.750 cents sold by Gandhi Bai infavour of Nesamony as document No.586/19889 dated 20.03.1989 and they separately took possession and enjoyment over their respective properties.

(iii) It is further submitted that, the sale deeds does not disclosed the alleged plaint 'B' schedule pathway. The vendor of the plaintiff Mr.Raj Mohan and Nesamony have not described the plaint 'B' schedule property in the above deeds. However, the plaintiff depicted a plan while executing the sale deed. Indeed, the vendors have no right whatsoever to form a alleged plaint 'B' schedule property since the plan categorically shows that, the alleged plaint 'B' schedule property is situated within the property of the defendant as the document sale deed executed by the plaintiff and the Nesamony and Rajmohan is clearly hit by the doctrine of " No vendor can sell in excess really what he has". In view of the same, the alleged the plaint 'B' schedule pathway is not maintainable and enforceable. The

defendants have reserved their right to file a counter claim or separate suit in this regard to set aside the plan annexed or depicted in the sale deed.

(iv) It is further submitted that, the above pathway consist of a bond to have a free ingress and egress of plaintiff to reach the plaint 'A' schedule property by vehicle. The width of the pathway is having an 2.50 metre and the length is 20 metre which is the clear pathway of plaintiff. The above pathway running towards the plaint 'A' Schedule property that started from the concrete road. Obviously, the plaintiff should know the fact about the encroachment of the alleged plaint 'B' schedule property in the sale deed which creates embargo in future. Therefore, the plaintiff purchased the above pathway from one Santhakumari, Jeacy, Jaya Malar, Irin Pon Malar and Jenin Prabhu as stated supra. The averments stated in para No.3 of the plaint is concerned, the defendants categorically and emphatically denied as false. The allegation and averment relating to the plaintiff and defendants are using the 3 feet pathway for more than decades without any restriction is utter false and denied. Likewise, the allegation relating to starting point of the plaint 'B' schedule property, the erstwhile owners' 1. Varuvel Nadar and Vaithiyanathan left each 1.5 square feet totaling to 3 feet in width and both constructed compound wall on all four sides is utter false

and denied. No such pathway is available as alleged. The plan annexed in the plaint categorically shows that, the alleged plaint 'B' schedule property divided 1<sup>st</sup> defendant's properties in tandem. The ending point of the alleged plaint 'B' schedule property goes into the property of one Pushpam and Josuhva. However, the plaintiff miserably and willfully failed to array the above Pushpam and Josuhva as a party in this suit. As the suit is bad for non joinder of necessary parties which is liable to be dismissed in limini.

(v) The allegations relating to the defendants attempted to close the plaint 'B' schedule property by putting a compound wall is also utter falsehood story. The plaintiff is trying to form the alleged schedule plaint B schedule pathway without any substantive right in it. The averments stated in para 4 of the plaint is concerned, the defendants categorically and emphatically denied as false. It is submitted that the alleged plaint B schedule pathway is prepared by the plaintiff in order to usurp the defendants property no such plaint B schedule pathway is available as alleged by the plaintiff. The alleged pathway mentioned by the plaintiff is absolutely belongs to the defendants. However, the plaintiff has prayed permanent injunction relating to the plaint 'B' schedule property without seeking declaration. The plaintiff has not prayed the declaration

relating to the plaint 'B' schedule property as injunction simplicitor is not maintainable. The defendants have every right to enjoy the properties by constructing compound wall and other things as the manner known to law. Per contra, the plaintiff is prevented to do so since the claimed property owner is defendants. The averments stated in para No.6 of the plaint is concerned, the defendant is categorically and emphatically denied as false. Since, the plaintiff is claiming the pathway without title, possession and enjoyment over the plaint schedule properties as the plaintiff has no cause of action to file this suit, hence this petition is liable to be dismissed.

**4. POINTS FOR DETERMINATION:-**

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

**5. DISCUSSION AND ANALYSIS:-**

Petitioner's side heard. Records perused carefully.

(i) The learned counsel for the petitioner argued that the main suit is filed for getting a relief of permanent injunction and other relief. The suit 'A' schedule property is belonged to the husband of petitioner. The petitioner as well as her predecessor in possession and used the petition 'B' schedule property to access the petition 'A' scheduled property. The

respondents/plaintiffs have no manner of rights over the suit petition 'B' schedule property. But, they are attempted to close the pathway. Hence, this petition is filed for getting a relief of status Quo. Considering the facts and circumstances of the case this court granted a status quo order on 01.07.2022, hence the same may be absolute till disposal of the main suit.

(ii) The learned counsel for the petitioner further argued that on 01.04.2009 Rajmohan and Nesamony sold the property jointly along with pathway right to the husband of petitioner by registered as Sale deed No.1201/2009 before the SRO Eraniel which is the petition 'A' schedule property. In the petition 'A' Schedule property she have construed a small room with hollow bricks for her own use and enjoyment. She submit that te near Mottavilai bus stop on the National Highway, a tar road runs towards north to south called as Mottavilai – Nettancode Road. To have ingress and egress to the petition 'A' schedule property, on the eastern side of Mottavilai – Nettancode Road a pathway measuring to an extent of 3 feet runs towards east, further turns north and thereby reaching the petition 'A' schedule property. The said pathway is the petition 'B' schedule property which measures approximately to an extent of 1 cent in Resurvey No.262/15 of Kurunthencode 'A' village. From the date of purchase of the petition 'A' schedule property to till date the predecessor , herself and

family members are using the petition 'B' schedule property. On the northern side of the petition 'B' schedule property the vendor Gandhimathi Bai sold an extent of 6,000 cents to the 1<sup>st</sup> Respondent / 1<sup>st</sup> Defendant – Krishnan Nadar registered as Sale deed No.1017/1986 , dated 17.04.1986 on the file of the S.R.O. Eraniel. It learnt that the 2<sup>nd</sup> respondent / 2<sup>nd</sup> defendant who is the none other than the wife of the 1<sup>st</sup> respondent / 1<sup>st</sup> defendant also owns a property on the western side of the 1<sup>st</sup> respondent / 1<sup>st</sup> defendant's property. The respondents / defendants 1& 2 merged the two properties into single plot compounded on all four sides.

(iii) The learned counsel for the petitioner further argued that the 1<sup>st</sup> respondent / 1<sup>st</sup> defendant also purchased a property in Resurvey No.262/18 to an extent of 2 cents registered as Sale deed No.1031/1986 on the file of the S.R.O. Eraniel situated on the south side of the petition 'B' schedule property. Thus herself and the respondents / defendants 1 & 2 are using the 3 feet pathway for more than decades together without any restrictions. It appears that on the starting point of the petition 'B' schedule property the erstwhile owner's viz. Varuvel Nadar & Vaidhiyanathan left each 1.5 sq. Feet totaling to 3 feet in width and both constructed compound wall on all four sides. As being the position the respondents/defendants 1 & 2 in the

last week of May 2022 attempted to close the petition 'B' schedule pathway by putting a compound wall in between the pathway.

(iv) On perusal of an Exhibit C1 and C2 it is found that the learned Advocate commissioner stated in Exhibit C1 and C2 that no such petition 'A' or 'B' schedule property is situated in the spot as described by the petitioner/plaintiff in the petition schedule property. Hence, this court is of view that there is no necessity to absolute the status quo order granted on 01.07.2022 till disposal of the main suit.

**6.DECISION:-**

In the result, status quo granted on 01.07.2022 is vacated and finally petition is dismissed.

Dictated by me, typed by Steno-Typist in computer, corrected and pronounced by me in open court, on this the 21<sup>st</sup> day of June 2024.

Sd/-A.Maruthupandi,  
District Munsif,  
Eraniel, (FAC)

**True copy**

**D.M.C. Eraniel.  
I.A.No.03/2022**

**in**

**O.S.No.28/2022**

**Fair/Draft order**

**Dated 21.06.2024**

