

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

Present: **Thiru. A. Maruthupandi, B.Com., B.L.,**

District Munsif, Eraniel. (F.A.C.)

Friday, the 03rd day of November 2023

I.A.No.03/2021

in

O.S.No. 42/2021.

K.Shahul Hameed,
S/o.Kadhar Maanapillai,
Rep.by his Power Holder
Mohamed Feroz.

Petitioner/Plaintiff.

vs

1. K.R.Ajithkumar (Died),
2. M.Kuttalam,
3. Prop.Addl.3 Hema Vijila,
4. Prop.Addl.4 A.H.Amresh Kumar

(Amended as per I.A.No.10 of 2022,
dated 14.07.2022)

Respondents/Defendants

This petition is coming before me for final hearing on 03.11.2023 in the presence of Mr.C.S.Lenin, learned counsel for the Petitioner/Plaintiff and Mr.S. K.Muthukumaresan, learned counsel for the 2nd to 04th Respondents/ 2nd to 04th Defendants and upon hearing the arguments on both sides 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, Rule 1 and 2 and Section 151 of the Code of Civil Procedure to grant an order of ad-interim injunction restraining the

respondents/defendants 1 & 2 their men or anybody claiming under them from making any construction or in any other manner causing interference over the petition 'B' schedule property till the final disposal of the suit.

2. THE AVERMENTS IN THE PETITION IN BRIEF:-

(i) The petitioner has filed the suit for Permanent injunction and Declaration against the respondents/defendants 1 & 2 in obstructing the pathway. In the year 2008, petitioner have purchased one cent of property comprised in Resurvey No.407/11A of Manavalakurichy Village on the western side of his family property from the 2nd respondent /defendant registered as Document No.1778/2008, dated 11.10.2008 on the file of the Sub Registrar Office, Manavalakurichy Village. On 11.10.2008 his mother Sbiya Beevi also executed a Settlement Deed No.1788/2008 in favour of his thereby settling an extent of 3.750 cents comprised in Resurvey No.407/11A of Manavalakurichi Village along with tiled house bearing Door No. 12-54C assessed to Manavalakurichi Panchayat. Thus he acquired valid title measuring to an extent of 4.750 cents comprised in Resurvey No.407/11A which is described as the petition 'A' Schedule property and he is an peaceful possession and enjoyment of the same. Thereafter, he demolished the old tiled house and constructed a new terraced house in the petition 'A' schedule property will compound walls on all four sides. While constructing the compound wall on the front portion (western side), he left an extent of 5 feet and 8 inches for free movements of four wheeler vehicles and for ingress and egress to his house.

(ii) He submits that while purchasing the property from the 2nd respondent/defendant, he has provided a pathway on the western side described as "எனது வகை பாதை மனையிடம் ". The said pathway is having an extent of 3 feet lying along with the left out area totaling to an extent of 8 feet and 8 inches and using the same by himself and the respondents/defendants 1&2 without any interference. The 1st respondent / defendant is the son of the 2nd respondent/defendant who is having property on the

western side of the pathway. To reach his house situated in the petition 'A' schedule property, a Panchayat road is in existence runs from east to west, leads connecting north to south, then runs towards west to east leading on the southern side. The said pathway is morefully described as the petition 'B' schedule property. The forefathers of himself, his family members, respondents/defendants and their family members and other villagers in the locality are using the petition 'B' schedule property as pathway for more than decades together without any disturbance. He submit that with the help of neighbours and well-wishers the illegal acts of the defendant 1 & 2 was thwarted. He preferred a complaint before the Manavalakurichy Police Station on 05.07.2021 requesting to take action against the respondents/defendants 1 & 2 for committing illegal acts and deeds. Based on the complaint the police officials visited the spot and instructed the respondents/defendants 1 & 2 not to do any kind of construction work here after unless the petition scheduled properties are measured by the help of Taluk Surveyor. The police also registered the complaint numbered as C.S.R.No.163/2021. He filed application before the Taluk Office on 16.07.2021 through online for measuring the petition schedule properties which was also acknowledged. Pending such application the respondents/defendants1 & 2 made another attempt on 19.07.2021 to block the petition 'B' schedule property which was foiled by the timely intervention of himself and the neighbours. Since he have to join employment at abroad urgently, he have executed a Power of Attorney in favour of his brother's son viz Mohamed Feroz to take appropriate steps to protect the petition schedule properties from interference. He submit that taking his absence the respondents/defendants 1 & 2 and their henchman at any time achieve the illegal object by taking the law in their hands. It is very much apprehended that the respondents/defendants 1 & 2 may accomplish their illegal object of any movement by using man power. The respondents/defendants 1 & 2 have no right either to block or restrain the plaintiff and his family in using the petition 'B' schedule property as pathway. The respondents/defendants 1 & 2 have no right to obstruct the pathway

since it is a legitimate right of Easement acquired by grant over the petition 'B' schedule property. In the said circumstances it is highly necessary that easementary right of pathway by grant over the respondent/defendants 'B' schedule property has to be declared in favour of Hehim and the respondents/defendants 1 & 2 are restrained by an order of permanent injunction restraining them from putting up any construction or causing obstruction on the petition 'B' schedule property. He submit that it is highly necessary that the respondents/defendants 1 & 2 be restrained by an order of ad-interim injunction restraining them from doing any act or blocking the petition 'B' schedule property or disturbing peaceful possession and enjoyment of the petition schedule properties. It is very much apprehended that the respondents / defendants 1 & 2 may accomplish their illegal object by force at moment. Hence, the respondents/defendants 1 & 2 have to be restrained by an order of injunction.

3. THE AVERMENTS IN THE COUNTER FILED BY THE 2nd RESPONDENT / 2nd DEFENDANT IN BRIEF:-

(i) The injunction petition that has been filed by the plaintiff is not at all sustainable. The petition is not maintainable in law or in facts. The description of the suit property is not correct. There is no property on land as described in plaint 'B' schedule. Plaint 'B' schedule property is an imaginary property and the plaintiff is not entitled to get any relief in this suit on the basis of present plaint 'B' Schedule. The allegation that this defendant sold an extent of 1 cent in Resurvey No.407/11A of Manavalakurichi village to the plaintiff on 11.10.2008 alone is admitted. The allegation that the plaintiff had left an extent of 5 feet and 8 inches on the Western side while constructing compound wall for free movements of 4 wheeler vehicles for ingress and egress to his house is not correct and hence denied.

(ii) The averments contained in paragraph 3 of the affidavit filed in support of the petition are not correct and hence denied. This defendant never provided path way on

western side of the property sold to the plaintiff as alleged. It seems after the execution of the said sale deed by this Defendant the plaintiff might have inserted the word “ பாடுத ” in the boundary description without the knowledge of this defendant before presenting the documents for registration. The intention of the plaintiff is to purchase the property which lays west of plaintiff “A” schedule property at a low price and he was demanding this defendant to execute a sale deed in his favour. This defendant had gifted the western 3 cents to the 1st defendant in this suit by executing a settlement deed. The said settlement deed was acted upon and the 1st defendant got right title and possession over the above said 3 cents property. Now the 1st defendant died after this suit and his right in the above said 3 cents devolved on his wife and son who are sought to be impleaded as defendants 3 and 4 in this suit.

(iii) There is no pathway on land having an extent of 8 feet inches as alleged in this Affidavit. There is a street on the south of Plaintiff ‘A’ Schedule having a width of 14 feet. The plaintiff can very well take his vehicles to his ‘A’ schedule property through the said street. The plaintiff has suppressed these facts with some ulterior motives. The allegation that the plaintiff his forefathers family members defendants, their family members and other villagers in the locality are using the alleged ‘B’ schedule property as pathway for more than decades without any disturbances is not correct and hence denied. It is pertinent to note the plaintiff has not impleaded the alleged users of alleged plaintiff ‘B’ schedule property as parties to this suit.

(iv) The allegation that in the 1st week of July 2021 Defendant 1 and 2 had attempted to block plaintiff ‘B’ schedule property on its western side and northern side of plaintiff ‘A’ schedule property by unloading granites stone and sand is not correct and hence denied. The alleged police complaint dated 05.07.2021 is not in any way connected with the alleged attempt to close the imaginary ‘B’ schedule pathway. So, that the allegation that the police officials had instructed defendant 1 and 2 not to do any kind

of construction work in Plaintiff Schedule property unless the property had instructed defendant 1 and 2 not to do any kind of construction work in plaintiff schedule property unless the property was measured by Taluk surveyor is not correct and hence denied.

(v) The police after due enquiry that the plaintiff had preferred such a false complaint for the purpose of grabbing the property of the 1st defendant by one way or another. So, they advised the plaintiff notwithi to file any such frivolous complaint at least in future. Since the plaintiff cannot achieve his object with the help of police, he has approached this court with some ulterior motives. The allegation that the plaintiff had applied before taluk surveyor for measuring plaintiff schedule properties through online is to be proved by the plaintiff. The alleged attempt to block the imaginary B schedule property on 19.07.2021 is to be proved by the plaintiff.

(vi) Since, the plaintiff has no right over the imaginary 'B' Schedule property, he has no right to file this vexatious suit. As absolute owner of 3 cents property, the proposed defendant 3 and 4 have got every right to enjoy the same. As stated above there is no pathway within 3 cents, the plaintiff has not acquired any easement right by grant or by other modes. Since, there is a street having width of 14 feet, there is no necessity to the plaintiff to use the property of defendants to get access to the road. So, the plaintiff is not entitled to get any declaration of easement right over the alleged plaintiff 'B' schedule property in this suit.

(vii) As on the date of this suit the 1st defendant is in lawful possession of the alleged 'B' schedule property and its remaining area. Now after the death of 1st defendant his legal heirs who are sought to be impleaded as Additional Defendant 3 and 4 are in lawful possession of the same. So, the plaintiff is not entitled to get any injunction in this suit. The plaintiff will not be prejudiced if no injunction is granted. But at the same time this defendant will be put to irreparable loss and injury if injunction is granted to the plaintiff. This petitioner is not entitled to get any relief in this petition. Hence, this petition is liable to be dismissed.

4. POINTS FOR DETERMINATION:-

Whether the petition is allowed or not ?

5. DISCUSSION AND ANALYSIS:-

Petitioner/Plaintiff and Respondents R2 to R4's side heard. Records perused carefully.

On perusal of an affidavit it is found that the petition 'A' schedule property was purchased by the petitioner/plaintiff through a document No.1778 of 2008 and 1788 of 2008. The document No.1778 of 2008 speaks about the petition 'B' schedule property that a pathway is situated on the Southern side of petition 'A' schedule property and more over on perusal of an -adjudication dated 28.07.2021 it is also found that the petition 'B' schedule property is a pathway and the same is disputed one which is admitted by the counsel for respondents/defendants. So, there is prima facie case is made out and balance of convenience also in favour of petitioner/plaintiff and if the status quo order is made absolute, no prejudice, loss or damages would be caused to the respondents/defendants, hence in the said circumstances and in the interest of justice this court is inclined to allow this petition.

6. DECISION:-

In the result, Status Quo order granted by this court on 07.08.2021 is made absolute till disposal of main suit.

Written by me, typed by the Steno-Typist in computer, corrected and pronounced by me in open court, on this 03rd day of November 2023.

Sd/-A.Maruthupandi,
District Munsif
Eraniel. (F.A.C.)
Draft/Fair Order
I.A.No.03/2021
in
O.S.No.42/2021
Dated: 03.11.2023.

/True copy/