

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

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

Friday, the 28th day of June 2024

I.A.No.07/2023

in

O.S.No.47/2020

1. Amalorpavam, W/o.Sabarianantham
2. Selvi, W/o.Selvakumar
3. Ugin Selvarani, W/o.Kuruz Antony
4. Selvarani, W/o.Jesudoni. .. Petitioners/Counter Claimants 3 to 6.

Vs.

Sujeeth Praka

.... Respondent/ Plaintiff.

This petition is coming before me for final hearing in the presence of Mr.C.S.Lenin, learned counsel for the Petitioners /Counter Claimants 3 to 6 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 VIII Rule 1 & 2 and 6A of the Civil Procedure Code, 1908 to pass an order for Permanent Injunction be granted restraining the plaintiff her men, agents or anyone claiming over them from interfering or disturbing the peaceful possession and enjoyment of the counter claim schedule property, Mandatory Injunction to remove and

dismantle the compound wall constructed on the western side of the pathway which runs from east to west direction further connect the northern side pathway fixed by this court and in the event of failing to do so enabling the plaintiff to get the same done through court in execution and recover the costs thereof from these defendants and for realization of all cost of the suit also be granted.

2. THE AVERMENTS IN THE PETITION IN BRIEF:-

(i) It is submitted that the defendants 3 to 6 hereby denied the whole averments stated in paras 1 to 11 of the plaint are false, misconceived and against fact and truth. The plaintiff has totally suppressed the real facts and details approached this court with a false claim. Hence the suit itself is liable to be dismissed on the ground of suppression of facts. It is submitted that for paras 1 to 5, the averment that the plaintiff acquired right and title to the plaint schedule property through sale deed and settlement deed has to be proved by her through valid documentary evidences. It is utter falsehood to state that the plaintiff took possession and enjoyment of the plaint schedule property which is lying as a single plot. The fact remains that the plaintiff not only to defeat the legal right of the defendants 3 to 6 but also the whole villagers of West Karankadu in using the pathway runs

east to west direction. It is to note here that the property comprised in Resurvey No.273/4 and Resurvey No.273/5 of Kurunthencode 'A' village having more area belonged to one Maria Thangaraj who subsequently divided into plots. At the time of converting the above said property into plots, the land owner left 4 feet width pathway from west to east direction. The above said pathway also connects the north to south pathway which leads to the Karancadu West Thereu. The defendants 3 to 6 are the purchasers of the respective properties from the land owners and using the allotted pathway for their ingress and egress connecting the north to south pathway to reach Karancadu West theru. After purchase, the defendant 3 to 6 for convenient usage and enjoyment left 2 feet area abutting the pathway now enlarged from 4 feet to 6 feet. It seems to understand that on 20.05.2009 the plaintiff purchased the western end plot from Maria Thangaraj to an extent of 3.350 cents comprised in Resurvey No.273/4B of Kurunthencode 'A' village.

(ii) It is submitted that likewise a pathway is situated on the northern side of the property and the residents situated therein are using the same leading towards west and then runs south and connects the pathway in existence west to east direction. The said pathway looks like on oval shape and the peoples residing on either side are using the same without

any disturbance or obstacles. It is pertinent to state here that in the year 2015 in the presence of the Parish Priest of the Church viz. St. Aloysius Church, Karancadu, the pathway situated on the northern side property and southern side was extended to a width of 10 feet for the common usage and enjoyment of the Karankadu Village peoples which was recorded in the minutes of the church. After such extension of pathway all the villagers are using the said pathway without any obstructions or hindrance by any of the residents living on the northern side and southern side of the property. The defendants 3 to 6 are not strangers as alleged but also one among the purchasers like the plaintiff in Resurvey No.273/4B with different measurements and constructed houses in their respective properties, thereby using the pathway and enjoying the same. The 04th defendant though neighbour but her husband viz. Selvakumar the owner of the property in Resurvey No.273/4B of Kurunthencode Village. Just opposite to the plaintiff's house, her father's property is situated in Resurvey No.273/6A1 to an extent of 13.333 cents of Kurunthencode Village which latter settled in favour of the plaintiff by Settlement Deed registered as Document No.2383/2011 before the SRO, Eraniel. In between the plaintiff's property and her father's property the above said pathway

passing from east to west direction connecting the pathway running towards west-northern directions.

(iii) It is submitted that the plaintiff with an ulterior motive to merge the purchased property and the settlement property into a single plot, by usurping the pathway, attempted to block the western side which was rightly intervened by the defendants 3 to 6 and the villagers and elders. Many attempts made by the plaintiff in closing the pathway on the western end is being thwarted but at last with money and muscle power the plaintiff closed the western end by using hollow bricks. Now the villagers are being prevented from using the pathway to reach the western end and thereby moving towards the northern side area due to the plaintiff's atrocities. The plaintiff with a malafide intention closed the pathway with hollow block bricks, plastered newly on the western side and created enmity between the adjacent peoples. In order to subvert the right of the peoples moving through the pathway the plaintiff blocked it and made false allegations against the defendants 3 to 6. The rest of the allegations averred against the 2nd defendant have to be answered by the 2nd defendant and no need to delve the head into the same. The allegation that on 03.09.2020 the defendants 3 to 6 came into the plaintiff's property and attempted to demolish the compound wall is against fact and truth. The plaintiff

wantonly closed the pathway on the western side by using hollow bricks and now the plaintiff is weeping the like crocodile tears. The averment contained in para 5 refers with the 2nd defendant and no need for the defendants 3 to 6 to answer those allegations.

(iv) It is submitted that for paras 6 to 11 the allegation that on 06.10.2020 the defendants 3 to 6 came to the plaint schedule property and attempted to demolish the building of the plaintiff is nothing but a fertile idea of the plaintiff to suit his case. It is true that the plaintiff is nothing but a fertile idea of the plaintiff to suit his case. It is true that the plaintiff gave a police complaint against the defendants 3 to 6 with false and untenable contentions, influenced the police officials to register the complaint as CSR No.657/2020 without any truth. The further averment that on the inducement of the 2nd defendant – President attempted to close the pathway of the plaintiff's house in order to create a new pathway separating the plaintiff's property is a blatant lie. Since the plaintiff herself involved in illegal activities by closing the western side pathway merged the properties situated on both side of the pathway and not the defendants 3 to 6 as alleged. The issuance of show cause notice by the 2nd defendant to the plaintiff on 22.09.2020 has to be proved by the plaintiff. The averment that on 09.10.2020 at about 09.30 A.M. the 3rd defendant and her sister jointly

made hindrances by putting stones and hollow bricks is nothing but a cock and bull story. Further the plaintiff is put to strict proof of the allegation that the sustained injury on her right hand and taken treatment at Kanyakumari Medical College & Hospital at Asaripallam and a case in Cr.No.670/2020 is pending against them. There is no bonafide in the plaintiff's averments and the suit itself is against the four corners of law. The plaintiff has no cause of action against the defendants 3 to 6 to file the suit with the following reliefs. The plaintiff wantonly and willfully close down the pathway running towards east to west direction which is the only access for the defendants 3 to 6 and other villagers to reach the other end of the pathway coming through the west-northern side. The construction put up by the plaintiff is an illegal one which to be demolished by order of this court at the cost of the plaintiff.

3. Counter not filed on the side of Respondent/ Plaintiff :-

4. POINTS FOR DETERMINATION:-

Whether the Petitioners / Counter Claimants 3 to 6 are entitled to the relief as prayed for or not ?

5. DISCUSSION AND ANALYSIS:-

Petitioners' side heard. Records perused carefully.

(i) On perusal of an affidavit the reasons for filing counter-claim is a reasonable one. Because of, the defendants have rights to seek a relief of counter claim and more over if this petition is allowed no prejudice would be caused to the respondents. Hence, this court is inclined to allow the same and more over the respondents are not coming forward to file counter, hence, it is presumed that they have no objection and allow this petition. ‘

6. DECISION:-

In the result, petition is allowed.

Dictated by me, typed by Steno-Typist in computer, corrected and pronounced by me in open court, on this the 28st day of June 2024.

True copy

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

D.M.C. Eraniel.

I.A.No.07/2023

in

O.S.No.47/2020

Fair/Draft order

Dated 28.06.2024

