

In the Court of the District Judge, District Court No.II,
Kancheepuram

Present: Thiru G.Karunanithi, B.Sc., M.L.,
District Judge, District Court-II,
Kanchipuram.

Wednesday, the 20th day of February 2019
I.A.NO. 684/2018 in O.S.NO. 173/2018

S.Ramesh Sha --- Petitioner/Plaintiff.
//vs//

1. S.Mala bai.
2. S.Manjula bai. --- Respondents/Defendants.

This petition is coming on 13.02.2019 for final hearing before me in the presence of Tvl. P.Sugapriyan, G.Vasudevan, D.Rajasekaran, Advocates for petitioner/plaintiff and of Tvl.M.shankarnath, R.Dhanasekar, D.Venkatraman, M.Jaiganesh, V.Karthik, R.Suryaprakash, Advocates for Respondents/defendants, upon hearing the arguments on both sides, upon perusal of records and having stood over for my consideration till this day, this court delivered the following

ORDER

This petition has been filed Under Order 39 Rule 1 & 2 to grant interim injunction restraining the respondents/ defendants their men or agents from in any way interfering with the peaceful possession and enjoyment of suit B schedule property and joint possession and enjoyment of suit C,D and E schedule property and to pass such other reliefs.

2) The petition averments in brief:

Petitioner is the plaintiff in the suit. The plaintiff filed the suit for declaration of his title to suit B schedule property and consequential permanent injunction and declaration that suit D and E schedule properties are common properties and he is entitled to undivided 4/6 shares and consequential permanent injunctiopn and mandatory injuntion to remove the grill gates and for permanent injunction and declaration that the release deed executed by the 1st defendant is null and for and for partition. 1st defendant is the mother and the 2nd defendant is his sister. The suit A schedule property and its eastern part originally belonged to one Vengamma Bai. She purchased the same from one Pachaiyappa Mudaliar in the year 1953. She settled the said property jointly to her sons Gopal Sha and Narayana Sha for their life and full right was given to Gopal sha's then minor sons Subramani Sha and Rajaram Sha and the male children born to them as well as the male children born to Narayan Sha. The settlement deed was accepted and acted upon. The said Narayana Sha died unmarried and issueless. Hence, the entire property was acquired by the branch of Gopal Sha. In pursuance of the settlement deed his father Subramani sha for himself and as his guardian, entered in to a registered partition deed with his brother Rajaram Sha on 01.08.1990. In the said partition under A schedule, western part measuring East to West 16 feet and North to South 130 feet was jointly allotted to the petitioner and his brother Subramani Sha. They were in joint possession and enjoyment of the suit property which is described as suit A schedule property. The survey No. is 2726/1B3B2. Town

survey field register extract stands in the name of the petitioner and his father. For convenient enjoyment of both the parties, they entered in to oral partition between them. In the said partition B schedule property was allotted to the petitioner. The C schedule was allotted to Subramani Sha and suit D schedule Narasam with right in well, Bore Well and Suit E schedule stairs were commonly allotted to both the sharers. From the said date onwards he is in continuous and exclusive possession and enjoyment of B schedule property and joint possession and enjoyment of D schedule Narasam, Well, Bore well and E schedule stair case with his father Subramani Sha. Subramani Sha died on 06.08.2010 leaving behind the petitioner and respondents to succeed all his assets including the suit C, D and E schedule properties. He is in joint possession and enjoyment of the suit C, D and E schedule properties with the defendants. Being a co owner he used the suit C schedule backyard portion as cattle shed. In the last week of May 2018 the 2nd defendant put grill gates in suit D schedule Narasam thereby hindered his free use of suit D schedule Narasam and C schedule Backyard. The same was questioned by the petitioner the 2nd defendant lodged a false complaint against him and using her influence threatened him to abide for her illegal demands. Hence he called the defendants to remove the grill gates and come forward for an amicable partition of Suit C schedule property and allot his 1/3rd share in the suit C schedule. Then only he knows that his father executed a Will and the 1st defendant released her life interest in favour of 2nd defendant. The said Will is registered Will. He denies the execution, attestation and registration of the Will. His father had

no right to executed the Will in respect of suit B schedule property. Based on the Will the 1st defendant executed the release deed on 09-02-2017 in favour of 2nd defendant. She has no right and hence the release deed will not bind upon the petitioner and his undivided interest in the suit C, D and E schedule. Hence, this petition is filed to grant ad interim injunction against the respondents from in any way interfering with his exclusive peaceful possession and enjoyment of suit B schedule property and joint possession and enjoyment of suit C, D and E schedule property.

3) **Counter averments in brief:-**

Petition is not maintainable. They denies all the allegations except those that are expressly admitted in the counter. The suit schedule property originally belonged to Pachayappa Mudaliar. The same was purchased by Vengamma through a registered sale deed. She executed a settlement deed in favour of her sons Gopal Sha and Narayana Sha for their life and full right was given to them. Narayana Sha died unmarried and issueless. Hence, the entire property was acquired by Gopal sha. He is having two male children viz., Subramani Sha and Rajaram sha. After the demise of Gopal sha the entire property gone to his male legal heirs viz., Subramani Sha and Rajaram Sha. On 01-0-8-1990 the Subramani Sha entered partition for himself and on behalf of his minor child Ramesh Sha with one Rajaram Sha and he executed partition deed . As per the above partition the petitioner and Subramani sha having the A schedule mentioned property. After partition the petitioner and Subramani sha have entered an oral partition between them. As per

the partition the petitioner having B schedule property and Subramani Sha having C schedule property. Both are having equal rights with common passage, Well and stairs. After the oral partition Subramani Sha executed a Will in favour of 2nd respondent and his wife S.Mala bai. As per the saide will the 1st respondent is having life interest and after her life time the 2nd respondent is having full right over the C schedule and common passage, well etc. On 09-02-2017 the first respondent executed a release deed to release the entire rights. After that she is holding possession and enjoyment of the schedule mentioned C property as well as common rights. She is having equal shares in common property. The petitioner along with his father in law entered to her portion and threatened him with dire consequences and trying to demolish the gate. She lodged a complaint before the Vishnu Kanchi police station. Pending the said FIR the wife of the petitioner filed a suit in OS 98/2018 before the Munsif Court, Kanchipuram for ther relief of permanent injunction. In the said suit the wife of the petitiioenr is not disputing the Will, release deed, and not disputed the title over C schedule property and common passage. The said suit was dismissed for default. After dismissal the petitioner has taken a different stand by way of disputing the above said Will and Release deed. To grab the property the present suit is filed with false averments. The petitioner has not challenged the Will. Without challenging the will the petitioner has now come forward to challenge the release deed which is invalid. Previously she had filed Writ petition seeking relief of demolishing the unauthorised construction put up by the petitioner which is still pending. The petitioner

developed enmity and filed this present suit. He prays to dismiss the petition.

4) The point for consideration is

Whether the petition deserves to be allowed?

5) No oral evidence was adduced on the side of the petitioner and Respondents. But Ex.P.1 to Ex.P.13 were marked on the side of the petitioner and Ex.R.1 & R2 were marked on the side of the Respondents.

6) Point: Heard. Records perused. The plaintiff filed the suit for declaration and injunction against the defendants. The first defendant is the mother. The plaintiff and the 2nd defendant are son and daughters to first defendant. It is admitted fact that the suit property originally belonged to one Vengamma Bai. On 21.07.1954 she has executed a settlement in favour of her sons Gopal Sah and Narayana Sah for life time and after that the property go to their male children. The Narayana Sah died unmarried and issueless. Hence, the property devolved to Gopal Sah branch. Gopal Sah had two sons namely Subramani Sah and Rajaram Sah. The plaintiff and defendants are the LRs of Subramani Sah. While he was alive a settlement deed executed between the plaintiff and his father and one of the sharer Rajaram Sah on 01.08.1990. In the partition the A schedule property allotted to plaintiff and his father. After that there was a internal partition between the plaintiff and his father in respect of A schedule property. The plaintiff filed a sketch along with plaint and it is marked as Ex.P.13. A schedule shown as the entire property. In this sketch, the AEFG marked portion shown as B schedule

property. JBHI marked portion shown as C schedule property. In the partition the B schedule allotted to plaintiff and C schedule allotted to the father of the plaintiff. The E schedule is staircases. D schedule is Narasam including well, borewell. From the date of purchase both are enjoying the property. The father died on 06.08.2010 leaving behind both parties as legal heirs. Hence in C, D and E schedule properties, the plaintiff is entitled to 1/3 share. The above facts are admitted by both parties.

(7) Now the main dispute between the parties is that for enjoyment of C, D and E portion alone. The plaintiff has stated that the 2nd defendant put grill gates in D schedule Narasam and thereby hindered his free use of C and D schedule properties. It is the case of the defendants is that the father has executed a Will on 23.06.2010 in favour of 2nd defendant with life interest to first defendant. The first respondent also executed a release deed in favour of the 2nd defendant on 09.02.1917. Hence, the 2nd defendant is in possession and enjoyment of the C schedule property as well as common rights. Therefore, from the case of both parties there is no dispute with regard to E and D schedule staircases and narasam. Hence, the plaintiff is entitled to permanent injunction in respect of E and D schedule properties.

(8) As far as C Schedule is concern admittedly it is allotted to father. If the Will is proved it will go to 2nd defendant. Otherwise all are entitled to equal share. In such situation this court has to decide whether the plaintiff is entitled for common enjoyment of C schedule property along with defendants. As already stated the

dispute is rest upon the proof of the Will. The petitioner has filed this petition not to interfere with the joint possession in the C schedule property. As on date there is no joint possession by the plaintiff in the C schedule property. Therefore, the question of injunction does not arise. Further, the petitioner has not sought for prayer not to alienate or encumber the suit property. Hence, any relief in respect of C schedule property cannot be granted.

(9) In view of the above discussion this court come to the conclusion the plaintiff is entitled to injunction in respect of B schedule property and entitled to injunction in respect of D and E schedule properties for common enjoyment. In respect of C schedule property the petition is liable to be dismissed.

(10) In the result, the petition is allowed partly. Interim injunction is granted against the respondent not to interfere with the petitioners peaceful possession and enjoyment in B schedule property and common enjoyment in D and E schedule properties. The respondents are directed to remove any obstruction made in the D and E schedule properties. In respect of C schedule property petition is dismissed. No costs.

Direct dictation given to the stenographer, computerized by her, corrected and pronounced by me in open court this the 20th day of February 2019

Sd/-G.Karunanithi
District Judge,
District Court No.II,
Kancheepuram.

Petitioners side Exhibits:-

Ex.P.1	21.07.1954	Certified copy of settlement deed executed by Vengamma Bai in favour of Subramani Sha and Rajaram Sha
Ex.P.2	01.08.1990	Certified copy of partition deed executed between Subramani Sha, plaintiff and Rajaram Sha
Ex.P.3	23.06.2010	Certified copy of Will executed by Subramani Sha.
Ex.P.4	19.08.2010	True copy of death certificate of Subramani Sah
Ex.P.5	05.12.2018	Encumbrance Certificate.
Ex.P.6	09.02.2017	Certified copy of the Release deed executed by 1 st defendant in favour of 2 nd defendant
Ex.P.7	26.11.2018	FMB sketch
Ex.P.8	2011-2019	Property tax receipts (7 Nos)
Ex.P.9	2010-2019	Water tax receipts (9 Nos)
Ex.P.10	23.12.2015	UGD tax receipt
Ex.P.11	23.12.2015	UGD Tax receipts (4 Nos)
Ex.P.12	--	EB Bills
Ex.P.13	--	Plaint sketches. (4 Nos)

Respondents side Exhibits:-

Ex.R.1	12.06.2018	Certified xerox copy of plaint in O.S.No. 98/2019
Ex.R.2	09-10-2018	Certified xerox copy of decree and judgment passed in OS.No. 98/2018

Sd/-G.K
D.J,
D.C.II,
KPM.

Draft/Fair Order
IA.No. 684/2018
OS.No. 173/2018
Dt 20-02-2019
District Court No.II,
Kancheepuram.