

**IN THE COURT OF PRINCIPAL DISTRICT MUNSIF KANCHEEPURAM  
KANCHEEPURAM DISTRICT**

**PRESENT: TMT.R. Rajeswari,B.Com.,L.L.M.,  
Principal District Munsif, Kanchipuram**

On wednesday, this the 27<sup>th</sup> day of March 2024

**IA.No. 02 of 2021**  
**in**  
**O.S.No. 71 of 2021**

V.Anandhan

...Petitioner/Plaintiff

/Versus/

1. Tmt.Kannaki

2. Tmt. Radhika

...Respondents/Defendants

This petition has come up on 18.03.2024 for final hearing before me in the presence of Thiru.V.Mohan, advocate for the petitioner and Thiru.L.Sowmiya Narayanan, advocate for the respondents and upon hearing the arguments of both sides and upon perusing the connected material records and having stood over till this day for consideration, this court delivers the following:-

**ORDER**

1. This petition is filed under Order 39 Rule 1 & 2 of CPC to pass temporary injunction to restrain the defendant or his men or agents or servants or legal heirs in any way not to put up any kind of construction, further construction or obstruction in plaintiff's peaceful possession and enjoyment of the A & B Schedule property till the disposal of the suit and also prayed ad-interim injunction till the disposal of this petition and pass such other suitable orders

2. **The case of the Petitioner as stated in his affidavit is as follows:-**

The petitioner submitted that he is absolute owner of the A Schedule property and purchased the same from one P.Ramu Vagaiyara under registered sale deed document No:969/2018 dated:20.09.2018 for valuable consideration. The P.Ramu has got the property under registered relinquish deed vide document No.665/2016 dated:06.06.2016. After purchase the property the revenue record patta No.1070 has been issued in the petitioner favour for new subdivision survey No.632/15B. The petitioner paying house tax and water tax in the petitioner name. The suit property house measuring east to west on northern side 25 feet, on southern side 22 feet, north to south on eastern side 59 feet and on western side 57 feet as such total extent is 1363 sq.ft bounded north by Bharathi Street, south by survey No.632/15A Rajendiran house plot, east by Aiyammal house plot, west by Kisthappa Naicker house plot. At presently on west by 2<sup>nd</sup> defendant's newly constructed house.

3. The 2<sup>nd</sup> defendant is owner of western side portion property i.e Survey No.632/14A ad measuring east to west on northern side 11 feet and southern side 10 <sup>1/2</sup> feet, north to south both side 40 <sup>1/2</sup> feet. The 2<sup>nd</sup> defendant purchased the suit property from one Pachaiyappan vide document No.1055/2018 dated:08.10.2018. In the A schedule property on northern side the petitioner house constructed east to west 21 feet and remaining 4 feet on western side left vacant place as mentioned in the plaint rough sketch ABCD portion. Presently the 2<sup>nd</sup> defendant has constructed a house east to west 16 feet north to south 22 feet by including their common way of 3 <sup>1/4</sup> feet. Therefore at presently there is no common way to defendant's property. Before construction of house, the petitioner have rightly mentioned about the petitioner 4 feet vacant place on western side of the suit "A" schedule property, the

defendants told that they will not construct anything in the vacant place. But in the petitioner absence, the defendants were constructed terrace cement roof floor by extent 3 feet east to west and 22 feet north to south i.e 19 feet east to west as balcony on eastern side i.e 4 feet vacant place which is mentioned B schedule property as ABCD in rough sketch.

4. In afore said situation the petitioner requested the defendants to remove the excess 3 feet terrace roof floor in the petitioner vacant place, initially the defendants agreed to remove the 3 feet roof floor which was constructed in the petitioner vacant place, after completion of entire building work all of sudden the defendants refused to remove the illegal construction of terrace roof floor and also put up 3 feet height small compound in the vacant place. Therefore the petitioner informed to the petitioner vendor Mr.P.Ramu about illegal construction of defendants, he also conducted panchayath, but the defendants very adamantly refused to remove the excess 3 feet roof floor by saying that they are constructed within their land. In the situation the plaintiff has requested the defendants to measure the property of both, the defendants prevented and refused to measure the property.
5. The petitioner given complaint before the Baluchettisathiram Police Station, but the police official refused to receive the complaint by saying that this is civil matter and advised to approach civil court. But due to Covid 19 lock down declared by Government the petitioner could not be taken any action against the defendants. In the month of june 2020 after some relaxation announced by Government, now the petitioner learn that the defendants are trying to alienate their property to third party by misrepresenting showing the petitioner vacant land on their own. Therefore the petitioner have given objection petition before the Damal Sub Registration Office

and the same received by Registrar and recorded plaintiff's objection. The petitioner further learnt that now the defendants are trying to get fraudulent patta by including the petitioner 4 feet of vacant land. For which the petitioner have given objection letter to Tasildhar and VAO. At presently the defendants are adamantly illegally refused to remove the balcony roof floor constructed in the petitioner 4 feet vacant place as mentioned in the B schedule property.

6. By the illegal construction of the defendants, the petitioner not able to use the petitioner 4 feet vacant place and the petitioner could not be constructed anything in the 4 feet vacant place. Now the defendants are very busily illegally trying to alienate the property by given wrong measurement by showing the petitioner vacant land to their own.
7. Therefore the petitioner have no other option except to file this petition. If temporary injunction not granted in the petitioner favour, it would cause to the petitioner irreparable loss and hardship. It can't be recompensed in any manner. The balance of convenience is in the petitioner favour. On other hand no prejudice would be caused to other side. Hence this petition.

**8. The respondent filed his counter and the gist of the same is as follows:-**

The allegation in the petition about the defendant's property is also not correct. The plaintiff's anxiety about no common way to the defendant's property is nothing but a crocodile tears. There is no such assurance given by the defendants, because the defendants have constructed well within their boundaries.

9. The allegations in the plaint about the removal of excess 3 feet terrace is not true and correct. There is no refusal to remove the encroachment as alleged, because there is no encroachment. The alleged panchayat between the plaintiff's vendor and

this defendant is nothing but one more cooked up story. There is no refusal by the defendant as alleged, because all the constructions are within his property.

10. The allegations in the petition about the complaint to the Police Station has exposed the plaintiff's true colour and intention. The covid 19 lockdown has become stock reason. The plaintiff's objection for defendant's alienation shows what the plaintiff wanted. There is no such attempt to obtain patta as claimed in the plaint, whereas the defendant was already given patta for the property owned and enjoyed by the defendant.
11. The allegations in the plaint about the 4 feet vacant site is illogical as of other paragraphs. It is inexplicable how the plaintiff is not able to use his 4 feet vacant site because of the defendant's construction. Further the allegations about the alienation is not correct. The plaint allegations are mutually destructive on one hand permanent injunction not to interfere with plaintiff's peaceful enjoyment of A & B schedule properties were sought, whereas mandatory injunction sought from B schedule property.
12. The cause of action for the suit arose on 06.06.2016, the suit was filed on 15.04.2021 was hopelessly barred by limitation. The plaintiff is very keen in abusing the defendants the words adamant, illegality, illegal and other words but failed to mention how the suit is in time. The doctrine estoppel by acquiescence squarely applicable in the present case. Invoking the doctrine of estoppel does not amount to the admission of title of the plaintiff. The plaintiff is a mute spectator when the construction was started and kept quiet for 3 years and filed the suit. On that ground also the plaintiff is not entitled to the relief claimed.
13. There is no pre suit notice and the prayer for declaration should be sought. The title

of the plaintiff to the B schedule property was specifically denied and the plaintiff should have sought for declaration of title. Hence, this petition may be dismissed.

14. The point for consideration in this petition is whether this petition is to be allowed or not.
15. During enquiry on the petitioner side exhibits Ex.P1 to Ex.P5 were marked. On the side of the respondents side Ex.R1 were marked.

**The Point:**

16. The learned counsel for the petitioner argued that he is absolute owner of the A Schedule property and purchased the same from one P.Ramu Vagaiyara under registered sale deed document No:969/2018 dated:20.09.2018 for valuable consideration. The P.Ramu has got the property under registered relinquish deed vide document No.665/2016 dated:06.06.2016. After purchase the property the revenue record patta No.1070 has been issued in the petitioner favour for new subdivision survey No.632/15B. The petitioner paying house tax and water tax in the petitioner name. The suit property house measuring east to west on northern side 25 feet, on southern side 22 feet, north to south on eastern side 59 feet and on western side 57 feet as such total extent is 1363 sq.ft bounded north by Bharathi Street, south by survey No.632/15A Rajendiran house plot, east by Aiyammal house plot, west by Kisthappa Naicker house plot. At presently on west by 2<sup>nd</sup> defendant's newly constructed house.
17. The 2<sup>nd</sup> defendant is owner of western side portion property i.e Survey No.632/14A ad measuring east to west on northern side 11 feet and southern side 10 <sup>1/2</sup> feet, north to south both side 40 <sup>1/2</sup> feet. The 2<sup>nd</sup> defendant purchased the suit property from one Pachaiyappan vide document No.1055/2018 dated:08.10.2018.

In the A schedule property on northern side the petitioner house constructed east to west 21 feet and remaining 4 feet on western side left vacant place as mentioned in the plaint rough sketch ABCD portion. Presently the 2<sup>nd</sup> defendant has constructed a house east to west 16 feet north to south 22 feet by including their common way of 3 <sup>1/4</sup> feet. Therefore at presently there is no common way to defendant's property. Before construction of house, the petitioner have rightly mentioned about the petitioner 4 feet vacant place on western side of the suit "A" schedule property, the defendants told that they will not construct anything in the vacant place. But in the petitioner absence, the defendants were constructed terrace cement roof floor by extent 3 feet east to west and 22 feet north to south i.e 19 feet east to west as balcony on eastern side i.e 4 feet vacant place which is mentioned B schedule property as ABCD in rough sketch.

18. In afore said situation the petitioner requested the defendants to remove the excess 3 feet terrace roof floor in the petitioner vacant place, initially the defendants agreed to remove the 3 feet roof floor which was constructed in the petitioner vacant place, after completion of entire building work all of sudden the defendants refused to remove the illegal construction of terrace roof floor and also put up 3 feet height small compound in the vacant place. Therefore the petitioner informed to the petitioner vendor Mr.P.Ramu about illegal construction of defendants, he also conducted panchayath, but the defendants very adamantly refused to remove the excess 3 feet roof floor by saying that they are constructed within their land. In the situation the plaintiff has requested the defendants to measure the property of both, the defendants prevented and refused to measure the property.

19. The petitioner given complaint before the Baluchettisathiram Police Station, but the

police official refused to receive the complaint by saying that this is civil matter and advised to approach civil court. But due to Covid 19 lock down declared by Government the petitioner could not be taken any action against the defendants. In the month of June 2020 after some relaxation announced by Government, now the petitioner learn that the defendants are trying to alienate their property to third party by misrepresenting showing the petitioner vacant land on their own. Therefore the petitioner have given objection petition before the Damal Sub Registration Office and the same received by Registrar and recorded plaintiff's objection. The petitioner further learnt that now the defendants are trying to get fraudulent patta by including the petitioner 4 feet of vacant land. For which the petitioner have given objection letter to Tasildhar and VAO. At presently the defendants are adamantly illegally refused to remove the balcony roof floor constructed in the petitioner 4 feet vacant place as mentioned in the B schedule property.

20. By the illegal construction of the defendants, the petitioner not able to use the petitioner 4 feet vacant place and the petitioner could not be constructed anything in the 4 feet vacant place. Now the defendants are very busily illegally trying to alienate the property by given wrong measurement by showing the petitioner vacant land to their own.
21. Therefore the petitioner have no other option except file this temporary injunction against the respondents / defendants till the disposal of the suit and also prayed as – interim injunction till the disposal of this petition. If temporary injunction not granted in the petitioner favour, it would cause to the petitioner irreparable loss and hardship. It can't be recompensed in any manner. The balance of convenience is in the petitioner favour. Hence, the petitioner counsel prayed to allow this petition.

22. During enquiry on the petitioner side Ex.P1 to Ex.P5 were marked. Ex.P1 is the Certified copy of Sale deed dated:08.10.2018 executed by Pachiyappan in favour of Radhika. Ex.P2 is the Certified copy of relinquish deed dated:06.06.2016 executed by P.Rajendiran and R.Banu in favour of P.Ramu. Ex.P3 is the Certified copy of Sale deed dated:20.09.2018 stands in the name of plaintiff. Ex.P4 is the Patta No.1070 dated:15.10.2018 stands in the name of Anandhan S/o Vijayaraghavan. Ex.P5 is the Plaint Rough Sketch
23. The learned counsel for the respondent argued that allegation in para the plaint about the defendant's property is also not correct. The plaintiff's anxiety about no common way to the defendant's property is nothing but a crocodile tears. There is no such assurance given by the defendants, because the defendants have constructed well within their boundaries.
24. The allegations in the plaint about the removal of excess 3 feet terrace is not true and correct. There is no refusal to remove the encroachment as alleged, because there is no encroachment. The alleged panchayat between the plaintiff's vendor and this defendant is nothing but one more cooked up story. There is no refusal by the defendant as alleged, because all the constructions are within his property.
25. The allegations in the petition about the complaint to the Police Station has exposed the plaintiff's true colour and intention. The covid 19 lockdown has become stock reason. The plaintiff's objection for defendant's alienation shows what the plaintiff wanted. There is no such attempt to obtain patta as claimed in the plaint, whereas the defendant was already given patta for the property owned and enjoyed by the defendant.
26. The allegations in the plaint about the 4 feet vacant site is illogical as of other

paragraphs. It is inexplicable how the plaintiff is not able to use his 4 feet vacant site because of the defendant's construction. Further the allegations about the alienation is not correct. The plaint allegations are mutually destructive on one hand permanent injunction not to interfere with plaintiff's peaceful enjoyment of A & B schedule properties were sought, whereas mandatory injunction sought from B schedule property.

27. The cause of action for the suit arose on 06.06.2016, the suit was filed on 15.04.2021 was hopelessly barred by limitation. The plaintiff is very keen in abusing the defendants the words adamant, illegality, illegal and other words but failed to mention how the suit is in time. The doctrine estoppel by acquiescence squarely applicable in the present case. Invoking the doctrine of estoppel does not amount to the admission of title of the plaintiff. The plaintiff is a mute spectator when the construction was started and kept quiet for 3 years and filed the suit. On that ground also the plaintiff is not entitled to the relief claimed.

28. There is no pre suit notice and the prayer for declaration should be sought. The title of the plaintiff to the B schedule property was specifically denied and the plaintiff should have sought for declaration of title. Hence, the respondent counsel prayed to dismiss this petition.

29. During enquiry on the respondents side. Ex.R1 were marked. Ex.R1 is the Patta No.851 stands in the name of Pachaiyappan S/o Krishnappa Naicker.

30. Heard both sides arguments. Connected material records perused. It is the case of the petitioner that "B" schedule property is the property of the petitioner and the defendant has made construction over the "B" schedule property. It is the case of the defendant, that the defendant has constructed the building only in his property.

Whether the construction made in the “B” schedule property by the defendant is in the property of the petitioner or not can be decided only after full fledged trial. It cannot be decided at this stage. The relief claimed by the petitioner in this petition and in the suit are one and the same. Hence, there is no prima facie case found in favour of the petitioner. This petition is liable to be dismissed.

31. In the result, this petition is dismissed. No cost.

Dictated to the steno-typist, who directly typed the same in her Computer, corrected and pronounced by me in open court, this the 27<sup>th</sup> day of March 2024.

PRINCIPAL DISTRICT MUNSIF  
KANCHEEPURAM

**Petitioner side exhibits:-**

Ex.P1	08.10.2018	Certified copy of Sale deed executed by Pachiyappan in favour of Radhika
Ex.P2	06.06.2016	Certified copy of relinquish deed executed by P.Rajendiran and R.Banu in favour of P.Ramu
Ex.P3	20.09.2018	Certified copy of Sale deed stands in the name of plaintiff
Ex.P4	15.10.2018	Patta No.1070 stands in the name of Anandhan S/o Vijayaraghavan
Ex.P5	--	Plaint Rough Sketch

**Respondents side exhibits:-**

Ex.R1	--	Patta No.851 stands in the name of Pachaiyappan S/o Krishnappa Naicker.
-------	----	---

PRINCIPAL DISTRICT MUNSIF  
KANCHEEPURAM

