

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

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

On Monday, this the 20th day of November 2023

**I.A.No. 2 of 2021
in
O.S.No. 199 of 2021**

A. Padmavathi

...Petitioner/plaintiff

/Versus/

S. Kuppan

K. Bala

K. Sathish Kumar

...Respondents/Defendants

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This petition has come up on 08.11.2023 for final hearing before me in the presence of M. Madanagopal, advocate for the petitioner and T.C.Soundarajan, 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 to 3 of CPC to grant an interim

injunction against the respondent not to disturb the petitioner peaceful possession and enjoyment of the schedule mentioned property till the disposal of the suit.

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

The petitioner is the absolute owner of the schedule mentioned property. The schedule mentioned property and other properties were originally belonged to one Sundaram, son of Balakrishnan, his son's S. Kuppan, S. Arumugam, S. Thanigaimalai, and her daughter's S. Anjanam and M. Santhi and the schedule mentioned property and other properties are their Ancestral Joint Family Properties.

3. The above said Sundharam had died on 12.03.2005. After his death, on 02.04.2012 the above said S. Kuppan, S. Arumugam, S. Thanigaimalai, S. Anjanam and M. Santhi had effected partition among themselves. In the above said partition deed dated 02.04.2012, the above said S. Arumugam was not a party, but his name had been added in the said partition deed, without his knowledge and consent. In the above said partition deed, the above said S. Arumugam was wantonly omitted and without his knowledge the above said partition deed had been executed and registered. But, later considering the relationship the above said S. Arumugam had accepted the above said partition dated 02.04.2012 and he had taken possession and enjoyment of the said properties. Later, due to various reasons beyond his control, the above said S. Arumugam had sold 3 times of the properties to the 3rd parties and he had

retained two items of the said properties with him. Later, the above said S. Arumugam, who is the petitioner husband, had executed the settlement deed and registered the same settling the property mentioned in the schedule (1st item in the said schedule) in petitioner favour on 25.03.2013. The above said settlement deed dated 25.03.2013 was accepted by the petitioner at once on the same day and the petitioner had taken possession and enjoyment of the same. Later, mutation proceedings had also been effected and patta had also been granted in petitioner name (Patta No. 960).

4. In the schedule mentioned property, there was a pump shed. Later, the petitioner husband, had spent a sum of Rs.6,00,000/- and put up two living rooms, Kitchen, Bathroom and Varanda in the year 2013 in the petition schedule mentioned property. Later, he had also applied for the service connection and got it. Further, he had also obtained tap water connection for the said building portion and the said building was also assessed to pay the property tax and presently, Kumar is a tenant in the said house for the past 5 years.
5. The petitioner submit that the 1st Respondent/1st Defendant S. Arumugam is elder brother, the 2nd Resondent/2nd Defendant is his wife and the 3rd Respondent/3rd Defendant is his son. In the above said partition deed dated 02.04.2012, the 1st Respondent/1st Defendant is a party to the said deed. When the above said two living rooms, Kitchen, Bathroom and Varanda were being put up, the 1st Respondent/1st Defendant had come over to the said building

and measured the same and he did approve the same. Subsequently, nothing came out from the 1st Respondent or from the Respondents in respect of the construction of the above said portion

6. The 1st to the 3rd Respondents/ 1st to the 3rd Defendants had influenced the Revenue Officials and got joint patta in respect of the common way (பொதுவாக விட்டு இருக்கும் சாலை) and they are claiming the right over the said common way located on southern side and also they are claiming a portion of the schedule mentioned properties on eastern side to the extent of 8 feet **East to West** including the well for which they have got no right to do so. Presently they are claiming the right over the portion measuring 8 feet East to West including the well and they may likely to claim further extent in future. The 1st Respondent is having vacant site on the Western side.
7. The petitioner is having a pucca house in the area in which they claim right. The 2nd Respondent/2nd Defendant had also preferred a report on 30.08.2021 against the petitioner husband by name S. Arumugam and the petitioner son A. Prakash in the Baluchetti Chathram Police Station and in-turn the said police station officials had enquired the petitioner. But, the above said police had advised the petitioner to seek the redress by measuring the property with the help of surveyor and in the Civil Court of Law. But the 1st to the 3rd Respondents/1st to the 3rd Defendants are trying to demolish the said portion with the help of rowdy elements. Hence this petition.

8. The 1st and 2nd Respondent filed their counter which is adopted by the and the gist of the same is as follows:-

The respondents submit that there was a partition on 02.04.2012, regarding family properties and in the partition deed under A Schedule allotted to 1st respondent that is the land bearing dry survey no.23/1A1A1A1A, East West in both side 7.2mtr, North South in Eastern side 17 mtr and Western side 15 mtr totally 115 sq.mtr in sirukaveripakkam village and the same was allotted to the share of the 1st respondent along with other properties. Similarly petitioner's husband was also allotted a B Schedule East West 6.4 mtr, in North side 6.2 mtr in southern side North West side 19.0 mtr in western side 17.0 mtr in western side in Survey No.23/1 sub division No.23/1A1A1A1A, sirukaveripakkam village along with other items. Even though in the deed, the petitioner did participate did not participate but later he accepted the partition in the settlement deed later executed by him in favour of his wife. The property now claimed by the petitioner is well within respondent's schedule. But the petitioner wantonly executed settlement deed claiming right falsely in the respondent's property.

9. Respondents submit that the suit is filed by the petitioner wantonly claiming some false right and for the same suitable reply is already sent. The respondents submit that the 1st respondent also granted patta in his name and he got order for Regularisation of plot also from Block Development Officer Sirukaveripakkam Panchayat Union, after measuring the property plot is

approved by the BDO. The respondents submit that ever since the partition, revenue records got transferred in his name.

10. The petitioner and her husband S. Arumugam created false claim under the guise of settlement deed in favour of 25.03.2013 by including the suit property which is absolutely belonged to 1st respondent only, by mentioning excess measurement as if he was the owner and in the same 1st respondent's property allotted as his share is also included without any right. The said settlement deed is not valid and binding on the respondent. Immediately after settlement deed cement sheet roof building has been raised by the petitioner in the respondent's property measuring East West 10ft, North South 25ft and when the 1st respondent questioned the petitioner's activities she and her husband were adamant in continuing the same. On 27.01.2014 itself notice was sent to remove the unlawful construction made by her by in the suit property for which no reply from the petitioner and her husband. Being brother and his wife respondent considering the relationship keeping quiet that they would clear out the encroachment but now falsely claiming right in the suit property. Hence, this petition may be dismissed.
11. The point for consideration in this petition is whether this petition is to be allowed or not.
12. During enquiry on the petitioner side exhibits P1 to P10 were marked. On the respondent side exhibits R1 to R7 were marked.

THE POINT:

13. The petitioner counsel argued that the petitioner is the absolute owner of the schedule mentioned property. The schedule mentioned property and other properties were originally belonged to one Sundaram, son of Balakrishnan, his son's S. Kuppan, S. Arumugam, S. Thanigaimalai, and her daughter's S. Anjanam and M. Santhi and the schedule mentioned property and other properties are their Ancestral Joint Family Properties.
14. The above said Sundharam had died on 12.03.2005. After his death, on 02.04.2012 the above said S. Kuppan, S. Arumugam, S. Thanigaimalai, S. Anjanam and M. Santhi had effected partition among themselves. In the above said partition deed dated 02.04.2012, the above said S. Arumugam was not a party, but his name had been added in the said partition deed, without his knowledge and consent. But, later considering the relationship the above said S. Arumugam had accepted the above said partition dated 02.04.2012 and he had taken possession and enjoyment of the said properties. Later, due to various reasons beyond his control, the above said S. Arumugam had sold 3 times of the properties to the 3rd parties and he had retained two items of the said properties with him. Later, the above said S. Arumugam, who is the petitioner husband, had executed the settlement deed and registered the same settling the property mentioned in the schedule (1st item in the said schedule) in petitioner favour on 25.03.2013. The above said settlement deed dated 25.03.2013 was accepted by

the petitioner at once on the same day and the petitioner had taken possession and enjoyment of the same.

15. In the schedule mentioned property, there was a pump shed. Later, the petitioner husband, had spent a sum of Rs.6,00,000/- and put up two living rooms, Kitchen, Bathroom and Varanda in the year 2013 in the petition schedule mentioned property. Later, he had also obtained the service connection and tap water connection for the said building portion and the said building was also assessed to pay the property tax and presently, Kumar is a tenant in the said house for the past 5 years.
16. In the above said partition deed dated 02.04.2012, the 1st Respondent/1st Defendant is a party to the said deed. When the above said two living rooms, Kitchen, Bathroom and Varanda were being put up, the 1st Respondent/1st Defendant had come over to the said building and measured the same and he did approve the same. Subsequently, nothing came out from the 1st Respondent or from the Respondents in respect of the construction of the above said portion
17. The 1st to the 3rd Respondents/ 1st to the 3rd Defendants had influenced the Revenue Officials and got joint patta in respect of the common way (பொதுவாக விட்டு இருக்கும் சாலை) and they are claiming the right over the said common way located on southern side and also they are claiming a portion of the schedule mentioned properties on eastern side to the extent of 8 feet **East to West** including the well for which they have got no right to do so. Presently they are claiming the right over the portion measuring 8 feet East to West including the

well and they may likely to claim further extent in future.

18. The petitioner is having a pucca house in the area in which they claim right. The 2nd Respondent/2nd Defendant had also preferred a report on 30.08.2021 against the petitioner husband by name S. Arumugam and the petitioner son A. Prakash in the Baluchetti Chathram Police Station and in-turn the said police station officials had enquired the petitioner. But, the above said police had advised the petitioner to seek the redress by measuring the property with the help of surveyor and in the Civil Court of Law. But the 1st to the 3rd Respondents/Defendants are trying to demolish the said portion with the help of rowdy elements. Hence, the petitioner counsel prayed to allow this petition.

19. During enquiry in the side of petitioner, Ex.P1 to Ex.P10 were marked. Ex.P1 is the Copy of the registered partition deed dated 02.04.2012 which was executed among 1.Kuppan, 2. Arumugam, 3. Tanigaimalai, 4. S.Anjanam 5. S. Santhi. Ex P2 is the Certified copy of the registered settlement deed dated 25.03.2013 which was executed by S. Arumugam in favour of the petitioner. Ex.P3 is the copy of the patta No. 960 stands in the name of the petitioner. Ex.P4 is the House Tax Receipt for the period 2013-2014(original) dated 15.10.2013 stands in the name of the petitioner. Ex. P5 is the House Tax Receipt for the period 2014-2015(original) dated 17.08.2015 stands in the name of the petitioner. Ex.P6 is the Water Tax Receipt for the period 2015-2016(original) dated 17.08.2015 stands in the name of the petitioner. Ex.P7 is the Water Tax Receipt for the period 2016-2017(original) dated 10.05.2017 stands in the name of the petitioner. Ex.P8 is the

TNEB CC charge card. (original). Ex.P9 is the Rough sketch regarding the suit property. Ex.P10 is the Photo copy of the petition which was given by the petitioner and petitioner's husband to the District Collector, Kancheepuram with acknowledgement.

20. The respondents counsel argued that the respondents submit that there was a partition on 02.04.2012, regarding family properties and in the partition deed under A Schedule allotted to 1st respondent that is the land bearing dry survey no.23/1A1A1A1A, East West in both side 7.2mtr, North South in Eastern side 17 mtr and Western side 15 mtr totally 115 sq.mtr in sirukaveripakkam village and the same was allotted to the share of the 1st respondent along with other properties. Similarly petitioner's husband was also allotted a B Schedule East West 6.4 mtr, in North side 6.2 mtr in southern side North West side 19.0 mtr in western side 17.0 mtr in western side in Survey No.23/1 sub division No.23/1A1A1A1A, sirukaveripakkam village along with other items. Even though in the deed, the petitioner did participate did not participate but later he accepted the partition in the settlement deed later executed by him in favour of his wife.

21. The 1st respondent also granted patta in his name and he got order for Regularisation of plot also from Block Development Officer Sirukaveripakkam Panchayat Union, after measuring the property plot is approved by the BDO. Ever since the partition, revenue records got transferred in his name.

22. The petitioner and her husband S. Arumugam created false claim under the

guise of settlement deed in favour of 25.03.2013 by including the suit property which is absolutely belonged to 1st respondent only, by mentioning excess measurement as if he was the owner and in the same 1st respondent's property allotted as his share is also included without any right. The said settlement deed is not valid and binding on the respondent. Immediately after settlement deed cement sheet roof building has been raised by the petitioner in the respondent's property measuring East West 10ft, North South 25ft and when the 1st respondent questioned the petitioner's activities she and her husband were adamant in continuing the same. On 27.01.2014 itself notice was sent to remove the unlawful construction made by her by in the suit property for which no reply from the petitioner and her husband. Being brother and his wife respondent considering the relationship keeping quiet that they would clear out the encroachment but now falsely claiming right in the suit property. Hence, this respondent counsel prayed to dismiss the petition.

23. During enquiry on the respondent side Ex.R1 to Ex.R7 were marked. Ex.R1 is the Copy of the registered partition deed dated 02.04.2012 which was executed among 1.Kuppan, 2. Arumugam, 3. Tanigaimalai, 4. S.Anjanam 5. S. Santhi. Ex.R2 is the Copy of the registered settlement deed dated 25.03.2013 which was executed by S. Arumugam. Ex.R3 is the Online copy of the patta No. 731 for stands in the name of 1st respondent. Ex.R4 is the proposed regularisation of unapproved layout in sundaram nagar, plot No.1, survey No.23/11, No.22, Sirukaveripakkam village, Kanchipura Taluk & District dated 30.05.2018.

Ex.R5 is the Copy of letter sent by member secretary to the Block Development Officer. Sirukaveripakkam Village, Kanchipuram dated 30.05.2018. Ex.R6 is the Proceedings of Block Development Officer, Kanchipuram Panchayat Union for regularization of plot dated 29.06.2018. Ex.R7 is the Acknowledgement card by the Petitioner.

24. Heard both sides and connected material records perused. The register partition deed dated 2.4.2012 was marked on both sides as exhibits Ex.P1 and Ex.R1.

The copy of register settlement deed executed by plaintiff husband Arumugam in favour the plaintiff was marked on both sides as exhibits Ex.P2 and Ex.R2.

The settlement deed executed by the plaintiff husband was based on the partition deed. In the partition deed B-schedule property was allotted to plaintiff husband S. Arumugam. In the B-schedule property the service connection No.467 was not mentioned. But in the settlement deed the above said service connection was mentioned. In the petition schedule property also the above said service connection was mentioned. Whether the petitioner is entitled to schedule mentioned property or not shall be decided only after full fledged trial. Apart from that the relief sought in this application and the plaint relief are similar. If the relief of temporary injunction is granted in favour of the petitioner, it is nothing but granting main relief in the suit as the relief sought are one and the same. Hence the petitioner is not entitled for the relief of temporary injunction.

25. 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 20th day of November 2023.

sd/(R.Rajeswari B.Com.,L.L.M.,)

PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM

Petitioner side Exhibits:

Ex.P1	02.04.2012	Copy of the registered partition deed which was executed among 1.Kuppan, 2. Arumugam, 3. Tanigaimalai, 4. S.Anjanam 5. S. Santhi
Ex. P2	25.03.2013	Certified copy of the registered settlement deed which was executed by S. Arumugam
Ex. P3	--	Copy of the patta No. 960 stands in the name of the petitioner
Ex. P4	15.10.2013	The House Tax Receipt for the period 2013-2014. (original)stands in the name of petitioner
Ex. P5	17.08.2015	The House Tax Receipt for the period 2014-2015. (original)stands in the name of petitioner
Ex. P6	17.08.2015	The Water Tax Receipt for the period 2015-2016. (original)stands in the name of petitioner
Ex. P7	10.05.2017	The Water Tax Receipt for the period 2016-2017 (original)stands in the name of petitioner
Ex. P8	--	The TNEB CC charge card. (original)stands in the name of petitioner
Ex. P9	--	Rough sketch regarding suit property
Ex. P10	--	Photo copy of the petition which was given by the petitioner and petitioner's husband to the District Collector, Kancheepuram with acknowledgement.

Respondents side Exhibits

Ex. R1	02.04.2012	Copy of the registered partition deed which was executed among 1.Kuppan, 2. Arumugam, 3. Tanigaimalai, 4. S.Anjanam 5. S. Santhi
Ex.R2	25.03.2013	Copy of the registered settlement deed which was executed by S. Arumugam
Ex. R3	--	Online copy of the patta No. 731 stands in the name of 1 st respondent
Ex. R4	30.05.2018	The proposed regularisatuion of unapproved layout in sundaram nagar, plot No.1, survey No.23/11, No.22, Sirukaveripakkam village, Kanchipura Taluk & District.
Ex. R5	30.05.2018	Copy of letter sent by member secretary to the Block Development Officer. Sirukaveripakkam Village, Kanchipuram
Ex. R6	29.06.2018	Proceedings of Block Development Officer, Kanchipuram Panchayat Union for regularization of plot
Ex. R7	--	Acknowledgement card by the Petitioner

sd/(R.Rajeswari B.Com.,L.L.M.,)
PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM