

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

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

On Thursday, this the 29th day of September 2022

IA.No.3 of 2022
In
O.S.No.19 of 2022

S.Parasuraman

...Petitioner/Plaintiff

/Versus/

S.Nagewaran

...Respondent/Defendant

This petition having coming up on 23.09.2022 for final hearing before me in the presence of M/s.D.S.Ramesh, B.Rama, S.Sharmila and K.Sarath Kumar, advocates for the petitioner and Thiru.S.Dhandayuthapani, advocate for the respondent 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 and 2 of CPC to pass an Ad-Interim Injunction restraining the respondent and his men, agents, servants or anybody on behalf of them from alienating and encumbering the suit schedule property.

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

The petitioners stated that the petitioner purchased a punja land in Dhamal Village to an extent of 1 acres and 31 1/2 cents in S.No.1144/1 from one Rangappa naicker @ Rangan on 19.02.1998 at Sub Register Office, Dhamal vide doc.No.114/1998.

The petitioner is a absolute owner of the above said property and he is in absolute possession of the property from the date of purchase of the property and enjoyed the property absolutely without any interruption from anyone.

The petitioner and his brother Nageswaran partitioned their ancestral property equally between them and enjoying the respective partition properties separately and they are the absolute owners and they are also the absolute possession of their ancestral properties.

The petitioner individual property in S.No.1144/1 to an extent of 1 acre 31 1/2 cents is a road facing property and in that property the petitioner put up an hut and also formed a chicken farm in that place and the petitioner got electricity connection for the same also and the petitioner put a borewell in that land for agricultural purpose and also for his farm.

The petitioner brother Nageswaran's (who is the respondent herein) partitioned property is lying next to the individual property of

the petitioner and the respondent doesn't have any road access to his property and the respondent has to go to the petitioner's land to reach his agricultural land.

The petitioner's brother Nageswaran approached the petitioner in the year 2009 and requested the petitioner to give 60 cents of road side land of the petitioner to the respondent and in turn he said he will give 1 acre of the respondent property to the petitioner to compensate the same.

Initially he refused for the same because he is running a farm in his individual property and not only that the value of the road side property is more than the value of the property to be given to the petitioner by the respondent. The respondent along with some local persons came and continuously requested the petitioner to give 60 cents of land and even the respondent said the respondent is ready to give 1 acre 20 cents of his land to the petitioner and also the respondent continuously pressurizing the petitioner to give 60 cents of petitioner's land to the respondent.

At one point of time on mutual understanding of the above terms the respondent agreed for the same and the petitioner executed a settlement deed in favour of the respondent regarding the property situated at Dhamal Village in S.No.1144/1 to an extent of

60 cents out of 1 acre 31 1/2 cents through an registered settlement deed vide Doc.No.542/2009 on 01.04.2009, at sub Register Office , Dhamal.

The respondent assured to give 1 acre 20 cents of his property to the petitioner after the registration of the above said settlement deed but the respondent simply dragon the petitioner for the registration of settlement deed of 1 acre 20 cents in favour of the petitioner. Initially, the respondent said the respondent will give 1 acre 20 cents next to the petitioner's land but subsequently the respondent changed his version and said the respondent want to give the last land only to the petitioner with regard to that some disputes were arised between the petitioner and respondent and in the presence of the local panchayat persons a compromise was arised between the petitioner and the respondent that either the respondent will give 1 acre 20 cents of his land to the petitioner or he will pay the current market value of the property of 1 acre 20 cents to the petitioner. In the meantime, both of them agreed that till the land is given to the petitioner, the petitioner can withhold his possession of the 60 cents of land which was given to the respondent by way of settlement deed. So, the possession of the 60 cents of land morefully described in the suit schedule property is with the petitioner only till now.

The petitioner took several steps to get back his land from the respondent but the respondent simply said one or other reasons for the cancellation of the settlement deed and not only that, he has not given 1 acre 20 cents to the petitioner as agreed by him. Since, the possession of the suit schedule property is with the petitioner and also the respondent assured that, he won't claim anything with regard to that property till either he executed a deed infavour of the petitioner to an extent of 1 acre 20 cents or the market value of the property to be given to the petitioner.

Since the respondent is the brother of the petitioner and also the possession of suit schedule property is with the petitioner only the petitioner does not insist the respondent and gave time to the respondent to pay the money or the land.

The petitioner is enjoying his individual property S.No.1144/1 continuously from the date of purchase to till date including the land to an extent of 60 cents which was given to the respondent till now and not only that the petitioner is in absolute possession of the property even after registration of the settlement deed infavour of the respondent and the possession never handed over to the respondent and all these facts known to the respondent and the respondent also not claimed possession from the petitioner.

Recently 3 weeks before, the respondent came to the petitioner's individual property and try to take possession of the suit schedule property through his men and with the help of the local people it was stopped by the petitioner and with regard to that, a police complaint also lodged in the local police station. Even at that time also the respondent agreed to give 1 acre 20 cents to the petitioner but till date the respondent has not transferred the same to the petitioner as per our mutual understanding.

The petitioner only executed a settlement deed infavour of the respondent under the impression that the respondent will exchange his land to an extent of 1 acre 20 cents to the petitioner but the respondent making false promises and thereby obtained the petitioner's land by way of fraud and not only that the respondent knows very well the possession of the suit schedule property with the petitioner only and the respondent obtained a settlement deed by of fraud and undue influence with a false promises and cheated the petitioner and the petitioner's all efforts were failed to get back his land and he his forced to file this suit for the cancellation of settlement deed executed by the petitioner in favour of the respondent.

Even though the settlement deed was registered with regard to the suit schedule property but the possession was not handed over to

the petitioner till date and moreover the above settlement deed was executed by way of fraud played by the respondent and hence the said settlement deed is not at all valid in the eyes of law and it was not at all acted upon till date and no possession was handed over to the respondent.

The petitioner got right , interest and possession to the plaint suit schedule property and now the respondent have been trying to take law in their hands and took efforts to dispossess the petitioner from the plaint schedule property. The petitioner have been exercising absolute rights over the plaint schedule property and being in continuous peaceful possession and enjoyment of their respective property and absolute owner of the suit schedule property.

On the basis of the fraudulent settlement deed vide Doc.No.549/2008 dt 01.04.2022 the respondent try to encumber the suit schedule property by way of selling the same to some 3rd parties. Now the petitioner came to understand that, on the basis of the settlement deed they are try to create further encumbrances in the suit schedule property.

The respondent have been trying to disturb the petitioner's possession and enjoyment of the plaint schedule property and the

respondent have no right to take the law in their own hands. The respondent have been making frantic efforts to dispossess the plaintiff's scheduled property by use of force against him. Hence the petitioner is forced to file this suit for cancellation of settlement deed and permanent injunction as against the respondent and for costs.

On the basis of the 2009 settlement deed the respondents are making serious attempt to alienate and encumber the suit property with defective title. The respondent have absolutely no right to alienate and encumber the suit property to any 3rd party. If the respondent are permitted to carry out their illegal object the petitioner would be put to heavy and irreparable loss. Apart from that it will lead to multiplicity of proceedings also by intervening 3rd parties right. The prima facie case and the balance of convenience are in favour of the petitioner's side and further the petitioner left with no other alternative and constrained to file the present suit for cancellation and permanent injunction.

Since the possession was not handed over and the settlement deed was not acted upon and it was obtained by fraud and moreover the respondent continuously said the respondent will transfer his land to an extent of 1 acre 20 cents to the petitioner, and now only the respondent refused to give his land to the petitioner and also 3 weeks before only the respondent try to disturb the petitioner's

possession and now immediately the petitioner filed this suit within the period of limitation. Hence this petition.

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

The respondent deny all the allegations contained in the plaint as incorrect and false, except those that are admitted herein and puts the plaintiff to strict proof of the same. The respondent submitted that the petitioner purchased a punja land in Dhamal Village to an extent of 1 acre and 31 1/2 cents in S.No.1144/1 from one Rangappa Naicer @Rangan on 19.02.1998 at Sub Register Office Dhamal vide Doc. No.114/1998 it not true and correct because the said property was purchased by the defendant in the name of the plaintiff when he was works at foreign the same is well known to vendor of the property as well as the village elders.

The petitioner and the respondent partitioned their ancestral property equally between them and enjoying the respective partition properties separately and they are the absolute owners and they are also the absolute possession of their ancestral properties.

The respondent further submitted that by way of his earning the respondent purchased the suit property in the name of the

petitioner and he formed a chicken farm and the petitioner erect an bore well in that property and the petitioner got the electricity connection for that the same was well known by the petitioner and the adjacent land owners.

The petitioner is not having any individual property he is having a partitioned ancestral property. The suit property was purchased by the respondent in the name of the petitioner due to his work. The petitioner taking advantage of that now trying to grab the property entirely.

At any point of time the respondent never said to give any property to compensate, because the suit property was purchased by the respondent in the name of the petitioner, name sake only he is the owner of the property. Even though the respondent never claimed the entire property purchased by him, because he would like to settle some portion of the property to the plaintiff for which he made an arrangement by way of the settlement deed in the year 2009.

There is no mutual understanding between them and the respondent is in possession and enjoyment of the suit property since in the year of 2009. It is true that the defendant changed his version

why the petitioner kept quite to take any effective steps as soon as possible, it is crystal clear to go to show that the petitioner never approached the court in his clean hands. Apart from that now a days the property value is increased for which they trying to grab money from the respondent in illegal way for which they filed a vexatious suit against the plaintiff.

Since from the date of purchase the plaintiff was enjoyed some portion of the property by way of permissible possession because it is purchased by him in the name of the plaintiff, since from the date of purchase the defendant is enjoying the property by way of farming a chicken farm to the open knowledge of the plaintiff. After the settlement deed itself he is in possession and enjoyment of the settled portion of the property at that juncture there is no possibilities to take possession of the suit property.

To the open knowledge of the plaintiff and the elders of the village the defendant is in possession and enjoyment of the suit property till the date of purchase because he is the absolute owner of the property. If the defendant got the property by way of fraud and undue influence what kind of steps to be taken against the defendant as soon as possible, there is no steps was taken more than 12 years. ie., clearly shows that the plaintiff never approached the court in his

clean hands and it is barred in the eyes of law. Hence this petition may be dismissed.

4. The point for consideration in this petition is whether this petition is to be allowed or not.

Points:-

5. The suit filed by the petitioner as against the respondent/defendant to cancel the settlement deed dt 01.04.2009 executed by the plaintiff in favour of the defendant vide in Doc.No.542/2009, Sub Registrar Office, Dhamal as it was obtained by fraud and Permanent injunction restraining the defendants and their men, agents, servants or any one on behalf of them from alienating and encumbering the suit schedule property and also filed the present petition seeking the relief of Interim injunction until the disposal of the suit.
6. The petitioner counsel argued that the petitioner and the petitioner brother Nageswaran partitioned their ancestral property equally between them and enjoying the respective partition properties separately and they are the absolute owners and also the absolute possession of their ancestral properties. The petitioner's individual property in S.No.1144/1 to an extent of 1 acre 31 1/2 cents is a road facing property and in that property the petitioner put up an hut and

also formed a chicken farm in that place and the petitioner's brother Nageswaran's partitioned property is lying next to the individual property of the petitioner and the respondent gone to the petitioner's land to reach his agricultural land and the respondent Nageswaran approached the petitioner in the year 2009 and requested the petitioner to give 60 cents of road side land of the petitioner to the defendant and in turn and the respondent said he will give 1 acre of the respondent property to the petitioner to compensate the same and the petitioner executed a settlement deed in favour of the respondent regard to the property situated at Dhamal village in S.No.1144/1 to an extent of 60 cents out of 1 acre 31 1/2 cents through an registered settlement deed vide doc.No.542/2009 at Sub Register Office, Dhamal. The respondent assured to give 1 acre 20 cents next to the petitioner's land of his property to the petitioner after the registration of the above said settlement deed, but the respondent changed his version and the respondent want to give the last land only to the petitioner with regard to that, some disputes were arisen between the petitioner and the respondent and in the presence of the local panchayat persons a compromise was arisen between the petitioner and the respondent that, either the respondent will give 1 acre 20 cents of his land to the petitioner or he will pay the current market value of the property of 1 acre 20

cents to the petitioner. In the mean time, both of them agreed that till the land is given to the petitioner, the petitioner can withhold his possession of the 60 cents of land which was given to the respondent by way of settlement deed. So, the possession of the 60 cents of land morefully described in the suit schedule property is with the petitioner only till now. The petitioner took several steps to get back his land from the respondent but the respondent simply said one or other reasons for the cancellation of the settlement deed and the respondent has not given 1 acre 20 cents to the petitioner as agreed by him. since, the possession of the suit schedule property is with the petitioner and also the respondent assured that, the respondent never claim anything with regard to that property till either the respondent executed a deed in favour of the petitioner to an extent of 1 acre 20 cents or the market value of the property to be given to the petitioner. The petitioner is enjoying his individual property S.No.1144/1 continuously from the date of purchase to till date including the land to an extent of 60 cents which was given to the respondent till now and the petitioner is in absolute possession of the property even after registration of the settlement deed infavour of the respondent and the possession never handed over to the respondent and all these facts known to the respondent and the respondent also not claimed possession from the petitioner. Even

though the settlement deed was registered with regard to the suit schedule property but the possession was not handed over to the petitioner till date and the above settlement deed was executed by way of fraud played by the respondent and on the basis of the fraudulent settlement deed vide Doc.No.549/2009, dt 01.04.2022 the respondent try to encumber the suit schedule property by way of selling the same to some 3rd parties. Hence the petitioner counsel to pray to pass an Ad-Interim Injunction restraining the respondent and his men, agents, servants or anybody on behalf of them from alienating and encumbering the suit schedule property.

7. The respondent counsel argued that the petitioner purchased a punja land in Dhamal Village to an extent of 1 acre and 31 1/2 cents in S.No.1144/1 from one Rangappa Naicer @Rangan on 19.02.1998 at Sub Register Office Dhamal vide Doc. No.114/1998 it not true, because the said property was purchased by the defendant in the name of the plaintiff when he worked at foreign the same is well known to vendor of the property as well as the village elders. The petitioner and the respondent partitioned their ancestral property equally between them and enjoying the respective partition properties separately and they are the absolute owners and they are also the absolute possession of their ancestral properties. The suit property was purchased by the respondent in the name of the

petitioner due to his work and true that property was purchased in the name of the petitioner taken advantage of that the petitioner try to grab the property entirely. At any point of time the respondent never said to give any property to compensate, because the suit property was purchased by the respondent in the name of the petitioner, for name sake only the respondent is the owner of the property. Even though the respondent never claimed the entire property purchased by him, because he would like to settle some portion of the property to the petitioner for which he made an arrangement by way of the settlement deed in the year 2009. There is no mutual understanding between them and the respondent is in possession and enjoyment of the suit property since in the year of 2009. It is true that the respondent changed his version why the petitioner kept quiet to take any effective steps as soon as possible, it is crystal clear to go to show that the petitioner never approached the court in his clean hands. Apart from that now a days the property value is increased for which they trying to grab money from the respondent in illegal way. Since from the date of purchase the plaintiff was enjoyed some portion of the property by way of permissible possession because it is purchased by the respondent in the name of the petitioner, since from the date of purchase the respondent is enjoying the property by way of farming a chicken

farm to the open knowledge of the petitioner. After the settlement deed itself he is in possession and enjoyment of the settled portion of the property at that juncture there is no possibilities to take possession of the suit property. To the open knowledge of the petitioner and the elders of the village the respondent is in possession and enjoyment of the suit property till the date of purchase because he is the absolute owner of the property. If the respondent got the property by way of fraud and undue influence what kind of steps to be taken against the respondent as soon as possible, there is no steps was taken more than 12 years. ie., clearly shows that the petitioner never approached the court in his clean hands and it is barred in the eyes of law. Hence the respondent counsel pray to dismiss this petition

8. The averments stated in the petition and counter are perused. Considering all these aspects this court's comes to the conclusion that in the affidavit the petitioner stated that the respondent continuously requested the petitioner to give 60 cents of land and even the respondent is ready to give 1 acre 20 cents of his land to the petitioner and also continuously pressurizing the petitioner to give 60 cents of petitioner's land to the respondent. On mutual understanding of the above terms the petitioner agreed for the same and he executed a settlement deed infavour of the respondent regard

to the property situated at Dhamal Village in S.No.1144/1 to an extent of 60 cents out of 1 acre 31 1/2 cents through an registered settlement deed vid Doc. No.542/2009 on 01.04.2009 at Sub Register office, Dhamal. Since the possession was not handed over and the settlement deed was not acted upon. on the basis of the settlement deed the respondent may create further encumbrances in the suit schedule property.

9. Therefore, this court is of the considered view is that the subject matter of the petition is to be considered after conducting trial proceedings, and also a full fledged trial is warranted in this case. However, this court found that the prima facie and balance of convenience is till in the favour of the present petitioner and therefore ad – temporary injunction was granted by this court in favour of the petitioner till disposal of the suit.
10. In the result, this petition is allowed. 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 29th day of September 2022.

PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM