

IN THE COURT OF THE DISTRICT MUNSIF, MELUR.

Present: Thiru.S.MUTHUKRISHNA MURALIDAS, M.A.M.L.,

DISTRICT MUNSIF, MELUR

Monday, the 4th day of March 2024

I.A No. 2/2024

in

O.S No. 14/2024

Raja Gopal

... Petitioner / Plaintiff

.Vs.

Anitha Lakshmi

... Respondent/Defendant

This petition has been coming before this court for final hearing on 12.02.2024 in the presence of Thiru. V.A.Dhana Aravindha Balaji, Advocate for the Petitioner/Plaintiff and Thiru. K. Selvam, Advocate for the Respondent/Defendant and upon hearing the argument on both side and having stood over for consideration till this date, this court delivered the following...

ORDER

This petition has been filed by the petitioner/plaintiff seeking temporary injunction restraining the respondent/defendant, their men, agents or any one claiming through them from any way disturbing the petitioner's peaceful possession and the enjoyment of the suit property in any manner and method till the disposal of the main suit.

1. Brief averment of the petition:

1.1)The plaintiff is the absolute owner of the suit property and it was I.A.No.2/2024 in O.S.No.14/2024

purchased from public auction which has been conducted by the Hon'ble Principal Subordinate Court, Madurai in O.S.No.66/1957 and further Eviction proceeding was conducted in E.A.No.515/1971 in E.P.No.34/1970 and the execution of decree and that the sale has been confirmed by the Hon'ble court on 03.04.1971 and above auction of the property and its possession is handed over vide Ammen warrant of Hon'ble Principal Subordinate Court, Madurai in E.P.No.34/1970 in favour of V.S. Gopalachari and he had execute the sale deed in favour of S.R. Thangamani on 21.08.1980 and further based upon the said sale deed further sale was concluded 19.05.1982 by Thangamani in favour of the Madurai engineers guild through Shanmugaperumal in Doc.No.148/1982 and he had executed sale deed in 2248/1983 dated 17/05/1983 in favour of one Amsavalli and she had executed power deed in Doc.No.11.02.2019 in favour of one Indharani who had executed sale deed in favour of the plaintiff for the valuable consideration in Doc.No.777/19 dated 14.08.2019.

1.2) One Savarinayagam who was the defendant in the said earlier suit with attempt to cause encumbrance after losing the case, title and possession created some fraudulent deeds which are not in possession and knowledge of the plaintiff, for which the defendant used to create mutation in her favour which could not confer any right or title and she is illegally attempting to encroach by way of illegal ways to unlawfully restraining the plaintiff from using the property and waylaid him 22.01.2024 which caused serious disturbances and mental agony to the plaintiff and hence he called upon the emergency police help line who had secured the plaintiff from the unlawful activities of the defendant and her hencemen.

I.A.No.2/2024 in O.S.No.14/2024

1.3) Whenever the plaintiffs enquire about the attempt to encroach, the defendant had colluded with some officials to create mutations in revenue records with ulterior motive to grab the suit property by restraining and by causing so much and disturbances to the plaintiff and hence the plaintiff applied for survey regarding the suit property.

1.4) After that it palpably established boundary of the suit property and the common pathway and after earmarking the boundaries which is approved layout in resolution no 4 dated 02.04.1983 itself and the defendant have some objection to earmark the suit property and restrict the plaintiff illegally and hence the plaintiff made a complaint before local jurisdictional police on 22.01.2024 and after due investigation and inquiry and the defendant was warned by the police officials and instructed the plaintiff to approach civil court for remedy.

1.5) On 23.01.2024 the defendant threatened the plaintiff that she would disturb the possession of the suit property since she is well equipped with muscle and man power and further the plaintiff apprehends in his mind that they would achieve their object unless the defendant is prevented by an order of injunction failing which this petitioner would be greatly prejudiced and such loss could not be compensated. Hence this petition.

2. Brief averment of the counter:

2.1) The description of the property mentioned in the petition as Plot No.A11 under S.No.125/30A1A is totally false. The four boundaries for the property also false and imaginary one. The case of the respondent is that, the property to an extent of 27 cents under Re-survey number 266/1, along with some other properties have been laid as a house site in the name of Tagore Nagar in which Eastern portion of plot number 47 has been purchased by this respondent on 19.08.2011. Now it lies under I.A.No.2/2024 in O.S.No.14/2024

UDR survey number 125/1E and 125/2A1A4.

2.2) Further it is contended that originally one Krishnaswamy Naidu has purchased the suit property by court auction on 26.07.1948 and thereafter one Kumaraswamy Pillai purchased the same from Krishnaswamy Naidu by virtue of sale deed dated 25.01.1950 bearing document no.466/1950.

2.3) Thereafter the said property was purchased by SavariNayagam, by virtue of sale deed dated 28.10.1963 bearing document no.7392/1963 and he laid several house sites in that property from which on 13.05.1964 Shajitha Begam purchased Plot No.47 having and extent of 5-1/2 cent by virtue of sale deed No.2807/1964. Subsequently, Kulam Dastagir by virtue of sale deed dated 13.03.2009 bearing document No.1321/2009 and Gurusamy by virtue of sale deed dated 13.03.2009 bearing document No.1322/2009 had purchased each 2-3/4 from the said Shajitha Begam in Plot No.47.

2.4) The said Kulam Dastagir had executed a sale deed dated 22.12.2010 in favour of Raji through his power agent M. Senthil. Thereafter, this respondent had purchased the said property on 19.06.2011 by virtue of document bearing No.5319/2011. From then this respondent is in possession and enjoyment of the said property. On 23.12.2013 this respondent has obtained building plan approval. Also, Madurai corporation has issued tax receipt in the name of the respondent. Till now the respondent in possession enjoyment of the property by suppressing the same this petitioner has filed the main suit and got an ad-interim injunction which is not liable to extended and this petition is liable to dismissed.

3. The petitioner has produced Ex.P1 to P12 and the respondent has produced Ex.R1 to R46. Heard both sides and as perused entire I.A.No.2/2024 in O.S.No.14/2024

records.

4. Now the point to be determined is whether the petitioner is entitled to get the relief of temporary injunction as prayed for?

5. The case of the petitioner is that the petition mentioned property is located at Siruthoor village of Tiruphalai Panchayat 14 cents under Survey number 267/1, 27 cents under Survey number 266/1, 1 Acre 50 cents under survey number 267/2 altogether 1 Acre 91 cents among which northern side to an extent of 80.3 cents have been laid as a house site having various approved plots, in which plot No. A11 which is comprised under Re-Survey No.266/1 to a larger extent of 27 cents, its UDR Survey No.125/1 and its existing survey No.125/30A1A having an extent of 3.356 cents.

6. As per the petitioner, the petition mentioned property was purchased by V.S.Gopalachari by way of sale auction held in E.A. No.515 of 1971 in E.P. No. 34 of 1970 on the file of the Principal Subordinate judge Madurai, and thereafter the said Gopalachari has executed a sale deed dated 21.08.1980 in favour of S.R. Thangamani and the said Thangamani has executed a sale deed on 19.05.1982 in favour of Madurai engineers guild. Thereafter the said Madurai engineers guild has executed a sale deed on 17.05.1983 in favour of Amsavalli and the said Amsavalli had executed a power of attorney with respect to the suit property on 11.02.2019 in favour of one Indrani and the said Indrani on the strength of said power deed has executed a sale deed on 14.08.2019 in favour of this petitioner, thereby this petitioner becomes the owner of the petition mention property and he is enjoying the petition mentioned property from the year 2009, when he obtained the sale deed.

7. The case of the respondent is that, the property to an extent of I.A.No.2/2024 in O.S.No.14/2024

27 cents under Re-survey number 266/1 along with some other properties have been laid as a house site in the name of Tagore Nagar in which plot No. 47 has been purchased by this respondent on 19.08.2011. Now it lies under UDR survey No. 125/1E and 125/2A1A4.

8. Further it is contended that, originally one Krishnaswamy Naidu has purchased the suit property by court auction and thereafter one Kumaraswamy Pillai purchased the same, thereafter purchased by SavariNayagam, then purchased by Shajitha begum and then Kulam Dastagir. Thereafter one Raji purchased the said property from Kulam Dastagir and the same was purchased by this respondent from said Raji.

9. The document Ex.P8 is the copy of sale confirmation and sale certificate issued by the court in E.P.No.34/1970. In addition to that it can be seen from the said document that the auction property in Survey No.266/1 having an extent of 27 cents, Survey No.267/1 having an extent of 14 cents haven been purchased by the said V.S.Gopalachari and the possession of the property was also handed over to him through court Amin. Ex.R2 is the sale deed dated 25.01.1950 bearing document No.466/1950 executed by one Krishnaswamy Naidu in favour of Kumaraswamy with respect to property in Survey No.266/1 having an extent of 27 cents, Survey No.267/1 having an extent of 14 cents, Survey No.267/2 having an extent of 3 Acres, property in Survey No.261/5A, Survey No.261/5B, Survey No.261/6, Survey No.261/1 in Siruthoor Village. In the said sale deed, it has been mentioned as the said properties were purchased by Krishnaswamy Naidu through court auction in E.P.No. 94/1948 on the file of this court.

10. Further, Ex.R3 is the sale deed dated 29.10.1963 shows that the said properties were purchased by SavariNayagam from Kumaraswamy. I.A.No.2/2024 in O.S.No.14/2024

Thereafter by virtue of a sale deed dated 13.05.1964 bearing document No.2867/1964 one Shajitha Begum purchased 5-½ cent in plot No.47 comprised under Survey No.266/1 having a larger extent of 27 cents. A patta pass book Ex.R5 also seems to have been issued in favour of Shajitha Begum to that effect. Also Ex.R6 is the tax receipt for the said plot No.47 under Ex.R5 patta No.868 issued in favour of Shajitha Begum on 11.06.1983. Ex.R7 shows that the computerized patta No.121 and 'A' register for the above said property stands in the name of Shajitha Begum as on 11.03.2009.

11. Therefore, the above documents shows as if the property under Survey No. 266/1 for an extent of 27 cents purchased by SavariNayagam on 28.10.1963, that is even before V.S.Gopalachari purchased the said property in a court auction under E.P. No.34/1970 in O.S.No.66/1957. But it can be inferred from Ex.P8 that said SavariNayagam purchased the said property during the pendency of O.S.No.66/1957 and so he was also added as the 4th defendant in the above suit.

12. Moreover, O.S.No.66/1957 was filed by ThulasiAmmal who is the mother of S.R.Thangamani against Chandrasekaran son of Ramasamy pillai, Soundarapandian son of Kumaraswamy pillai, Lakshmi daughter of Kumaraswamy pillai and the said SavariNayagam. The above four were arrayed as defendants and except SavariNayagam all other 3 defendants seems to have belonged to same family with same address namely Pillayar Palayam. Ex.R2 is the sale deed in the name of Kumaraswamy pillai son of Ramasamy Pillai of Pillayar Palayam purchased the properties including the property in Survey No.266/1 to an extent of 27 cents. The said property was purchased from said Kumaraswamy pillai by SavariNayagam through sale deed Ex.R3. From I.A.No.2/2024 in O.S.No.14/2024

the above said Ex.R2,R3 it is clear that the said Kumaraswamy pillai is the father of the defendants No.2,3 and the defendant No.1 is the brother of father of defendants No.2,3 in O.S. No. 66/1957 as well as in E.P. No.34/1970.

13. Altogether, it can be understood that O.S. No. 66/1957 was filed by the mother of S.R.Thangamani against heirs of Ramasamy Pillai and Kumaraswamy pillai. When the said suit is pending the said Kumaraswamy pillai sold out the subject matter of that suit to SavariNayagam by virtue of sale deed Ex.R3 dated 28.10.1963 and he laid a house sites and sold plot No.47 having extent of 5 - $\frac{1}{2}$ cent to Shajitha on 13.05.1964. The said Shajitha sold part of it to Kulam Dastigar on 13.03.2009 and remaining part to one Gurusamy on the very same day by virtue of Ex.R10. Thereafter by virtue of sale deed dated 22.12.2010 one Raji purchased from Kulam Dastigar and then this respondent purchased the said property from said Raji through Ex.R13.

14. In the execution proceedings in O.S. No. 66/1957 as well as in E.P. No.34/1970, the subject matter of property was purchased by V.S.Gopalachari wherein SavariNayagam as well as his predecessor in title namely heirs of the Kumaraswamy pillai was also a party, the result of said proceeding will binding upon that parties. Also it is clear that through that E.P proceedings the possession of the said property was handed over to V.S.Gopalachari through court Amin on 12.08.1971. As such, as on 12.08.1971 V.S.Gopalachari is the owner of property in Survey No.267-1 to an extent of 14 cents and Survey No.266/1 to an extent of 27 cents. Therefore, the execution of sale deed dated 13.05.1964 Ex.R3 in favour of Shajitha Begum itself would have no legal effect. While being so, execution of sale deed by said Shajitha I.A.No.2/2024 in O.S.No.14/2024

Begum without having better title on the strength of Ex.R4 to Kulam Dasthagir and Gurusamy, thereafter Kulam Dastigar executed in favour of Raji and thereafter said Raji to this respondent would also have no legal effect at all.

15. Furthermore, the said V.S.Gopalachari executed a sale deed Ex.P1 on 21.08.1980 in favour of S.R.Thangamani who is the daughter of the plaintiff in O.S. No.66/1957 with respect to the properties purchased by him through court auction Ex.P8. Thereafter, Thangamani has executed a sale deed Ex.P2 dated 20.01.1982 in favour of the secretary, Madurai Engineers Guild. Till Ex.P2 the property as alleged by the petitioner was properly conveyed.

16. Now, as per the case of the petitioner, the said Madurai Engineers Guild through its Secretary Shunmugaperumal executed a sale deed Ex.P3 dated 17.05.1983 bearing document No.2248/1983 in favour of Amsavalli with respect to the petition mentioned property. But a perusal of Ex.P3 shows, as it was a sale deed dated 17.05.1983 bearing document No.2248/1983 executed by one Gandhimathi in favour of P.S.Manisundaram with respect to property plot No15 extent of 5- $\frac{1}{2}$ cents comprised under Survey No. 62/2 having extent of 58 cents, Survey No. 62/4 having extent of 29 cents in Managiri village of Madurai North Taluk. Therefore Ex.P3 is not relevant to the petition mentioned property. As such the contention that Amsavalli purchased the petition mentioned property by virtue of Ex.P3 is unsustainable.

17. Furthermore, Ex.P4 is the power of attorney executed by Amsavalli in favour of Indhirani on 11.02.2019 as if she had purchased the petition mentioned property from Madurai Engineers Guild through its Secretary Shunmugaperumal vide Ex.P3 the sale deed dated I.A.No.2/2024 in O.S.No.14/2024

21.05.1983 bearing document No.2248/1983. As already discussed above Ex.P3 the sale deed document No.2248/1983 is no way connected to the fact in issue and it does not shows as Madurai Engineers Guild through its Secretary Shunmugaperumal executed the sale deed in favour of Amsavalli. Hence, Ex.P4 power deed and through which Ex.P5 sale deed dated 14.08.2019 executed by the power agent of Amsavalli executed in favour of this petitioner is no legal effect, since the principal herself has no valid title as per Ex.P3, she cannot executed a Power of attorney for the property she does not have any title. Therefore the title of the petitioner to the petition mentioned property is in question.

18. Though, Ex.P6 encumbrance certificate, Ex.P7 house tax receipt shows as if it stands in the name of the petitioner with respect to the petition mentioned property, it refers to property in Survey No. 125/30A1A. Patta Ex.P12 also shows the same survey number but not stands in the name of the petitioner. Ex.P9 is the xerox copy of layout for plot No.P10 and Ex.P11 is the property tax receipt for that property produced. Said documents appears to have belonged to one Tamilarasi. The petitioner has not produced Patta for the petition mentioned property in his name. Also no materials produced to show that Survey number 266/1 is correlated with Survey No. 125/1 and Survey No. 125/30A1A.

19. The documents produced by the respondents from Ex.R14 the receipt for bore well, Ex.R15 xerox copy of tax receipt, Ex.R16 lay out, Ex.R17 xerox copy of counterfoil for payment to Engineer, Ex.R18 building plan approval for plot 47 part, Ex.R19 Madurai corporation building plan scrutiny report xerox, Ex.R20 building approval xerox and other documents Ex.R21 to Ex.R29 which shows the property tax, A register, FMB sketches, Adangal extract, EB receipt and EB card, I.A.No.2/2024 in O.S.No.14/2024

Ex.R34 is the survey notice, Ex.R35 the surveyor sketch, Ex.R36 patta transfer order, Ex.R37 FMB sketch, would though shows that the respondent is in possession over the property in Survey No.12 Ex.P11 5/1E2 and Survey No.125/33 it's old survey No.266/1, it has to be decided whether her possession is legal in view of her title derives from SavariNayagam who is the lispendens purchaser.

20. Further, mere producing Ex.R30 to Ex.R33 photos would not be helpful for the case of the respondent through which this court cannot come to the conclusion of the picture shows in the photo is the petition mentioned property.

21. Further Ex.R39 and Ex.R38 has been produced to show the adjacent plot stands in the name of one Thangajeyakumari. Ex.R40 to Ex.R43 is the complaint given by the respondent as well as her husband before the Superintendent of Police, The Commissioner of Police Madurai regarding the dispute between the parties. The above all documents though shows that there is a dispute between the parties, it would not suffice to accept the case of the respondent that she is having better title than the petitioner and on the strength of the title she is in possession.

22. Also as discussed earlier, when this petitioner has purchased the property from the power agent of principal Amsavalli who has no title to that property, the petitioner is also has no title over the petition mentioned property. As such as the petitioner has failed to establish prima facie case that he is the title holder of the property and he is in possession and enjoyment over the petition mention property. As relied by the respondent in the case of *K.Karthik Chandran and a Ex.P11 nother vs. Kali Aerated Water Works Pvt. Ltd., 2023(3)MWN(Civil)472* I.A.No.2/2024 in O.S.No.14/2024

wherein the Hon'ble High Court of Madras categorically held that the petitioner must satisfy three cardinal test for grant of Temporary Injunction viz., (a) prima facie case (b) balance of convenience (c) irreparable hardship in his favour. Even if one test is not satisfied, the court should desist from granting Interim Injunction.

23. In the present case the title of the petitioner is in dispute, his convenience to enjoy the property cannot be considered and since he has not established the prima facie case, the petitioner is not entitled to get the relief of temporary injunction. Accordingly, the ad-interim Injunction granted infavour of petitioner is hereby vacated and thus this petition is dismissed. No cost.

This order is typed by me and corrected and pronounced by me in open court, this the 04th day of March 2024.

Sd/-
(S. Muthukrishna Muralidas, M.A., M.L)
District Munsif
Melur.

List of Witnessess on the side of petitioner : Nil

List of Documents on the side of Petitioner:

| Exhibit | Date | Description | Remarks |
|---------|------------|----------------------------------|------------------|
| EX P1 | 21.08.1980 | Sale Deed | Certificate copy |
| EX P2 | 20.01.1982 | Sale Deed | Certificate copy |
| EX P3 | 17.05.1983 | Sale Deed | Certificate copy |
| EX P4 | 28.02.2019 | Power deed. | Certificate copy |
| EX P5 | 14.08.2019 | Sale deed infavour of plaintiff. | Certificate copy |
| EX P6 | 23.01.2024 | Encumbrance certificate | Certificate copy |
| EX P7 | 20.07.2023 | Corporation tax receipt. | Certificate copy |
| EX P8 | 03.04.1971 | Copy of sale confirmation | Certificate copy |

| | | | |
|--------|------------|---|-----------------------|
| | | issued by the court in E.P.No.34/1970. | |
| EX P9 | ----- | layout for plot No.P10 | Office copy. |
| EX P10 | 25.09.2021 | Property tax receipt. | Computerized copy. |
| EX P11 | ----- | Property tax receipt. | Computerized copy. |
| EX P12 | ----- | Patta No.3774 | Xerox. |

List of Witness on the side of respondent : Nil

List of Documents on the side of Respondent:

| Exhibit | Date | Description | Remarks |
|---------|-------------|---|----------------------------|
| EX R1 | ----- - | Respondent Adhaar card. | Compared with Original. |
| EX R2 | 25.01.1950 | Sale deed bearing document No.466/1950 executed by one Krishnaswamy Naidu in favour of Kumaraswamy | Certified Copy |
| EX R3 | 29.10.1963 | Sale deed | Xerox |
| EX R4 | ----- -- | kulam Dasthagir and Gurusamy, thereafter Kulam Dastigar executed in favour of Raji Sale deed. | Xerox |
| EX R5 | ----- | Patta pass book | Original |
| EX R6 | ----- | Tax receipt for the said plot No.47 under patta No.868 | Original |
| EX R7 | 11.03.2009 | Computerized patta No.121 and 'A' register for the above said property stands in the name of Shajitha Begum as | Computerized copy. |

| | | | |
|--------|-------------|--|--------------------|
| | | on 11.03.2009. | |
| EX R8 | 06.03.2009 | Sale deed. | Computerized copy. |
| EX R9 | 15.04.2009 | Patta | Original. |
| EX R10 | 12.03.2009 | Sale deed. | Computerized copy. |
| EX R11 | 17.06.2019 | Sale deed. | Xerox. |
| EX R12 | 22.12.2010 | Sale deed. | Xerox. |
| EX R13 | 19.08.2011 | Sale deed. | Xerox. |
| EX R14 | 25.12.2013 | Receipt for bore well | Xerox. |
| EX R15 | 04.12.2013 | Tax receipt | Xerox. |
| EX R16 | ----- -- | lay out | Xerox. |
| EX R17 | 25.11.2013 | Counterfoil for payment to Engineer | Xerox. |
| EX R18 | 25.11.2013 | Building plan approval for plot 47 part | Xerox. |
| EX R19 | ----- | Madurai corporation building plan scrutiny report. | Xerox. |
| EX R20 | ----- | Building approval xerox and other documents | Xerox. |
| EX R21 | 02.12.2013 | Property tax Notice. | Xerox. |
| EX R22 | 11.12.2013 | EB. Card | Original |
| EX R23 | 27.04.2023 | Adangal Respondent 125/1E2, 125/33. | Computerized Copy. |
| EX R24 | 03.02.2024 | Patta 125/1E2, 125/33 | Computerized Copy. |
| EX R25 | ----- | A-Register. | Computerized Copy. |
| EX R26 | 03.02.2024 | FMB Sketch-125/1E2 | Computerized Copy. |

| | | | |
|--------|------------|--|--------------------|
| EX R27 | 03.02.2024 | FMB Sketch-125/33 | Computerized Copy. |
| EX R28 | ----- | A-Register-125/1E2 | Computerized Copy. |
| EX R29 | 23.07.2022 | Property Tax, Sketch. | Original |
| EX R30 | ----- | Photos | Original |
| EX R31 | ----- | Photos | Original |
| EX R32 | ----- | Photos | Original |
| EX R33 | ----- | Photos | Original |
| EX R34 | ----- | Survey Notice | Xerox |
| EX R35 | ----- | Surveyor sketch | Original |
| EX R36 | 13.04.2020 | patta transfer order | Xerox |
| EX R37 | ----- | FMB sketch, | Computerized Copy. |
| EX R38 | 10.08.2003 | Sale deed. | Certified copy. |
| EX R39 | 03.02.2024 | Patta No.955. | Computerized Copy. |
| EX R40 | 10.04.2023 | Complaint to superintendent of police, Madurai. | Xerox. |
| EX R41 | ----- | Lay out. | Xerox. |
| EX R42 | 23.01.1965 | Complaint Petition to superintendent of police, Madurai. | Xerox. |
| EX R43 | 06.02.2024 | Online Complaint. | Computerized Copy. |
| EX R44 | ----- | Encumbrance Certificate. | Xerox. |
| EX R45 | 16.01.2024 | E.B. Approval. | Online copy. |
| EX R46 | 16.01.2024 | E.B. Approval, application status. | Online copy. |

Sd/-
(S. Muthukrishna Muralidas, M.A., M.L)
District Munsif
Melur.

IA No.2/2024
in
OS. 14/2014
Fair/Draft Order ,
Date: 04.03.2024