

IN THE COURT OF DISTRICT MUNSIF, VADIPATTI, MADURAI DT.

Present: Thiru.D. Ramganes M.A.,B.L.,  
District Munsif.

1<sup>st</sup> day of October 2019 Tuesday

I.A.No. 225/2018

in

O.S.No.57/2018

Narayanan

: Petitioner/Plaintiff

//Versus//

1. K. Gurunathan
2. Velumayil
3. Sangaiah
4. Priya
5. Ramalakshmi

: Respondents/Defendants

This petition is filed before this court and it was taken on 16.04.2018 and Advocate Thiru. S.J. Chakkaravarthy appeared for the Petitioner/Plaintiff and Thiru. V.G.S.Murugan appeared for the Respondents/Defendants, and this petition came before me for final hearing on 27.09.2019 upon perusing the available material records and having stood over for consideration till this day, today this court delivered the following...

**ORDER**

The petitioner had filed this petition U/s 39 Rule 1 & 2 C.P.C. to grand an order of AD-INTERIM INJUNCTION till the disposal of this petition followed by an order of Temporary injunction till the disposal of the suit restraining the Respondents/Defendants, their men, agents and servants from in any way interfering with petitioner's peaceful possession and enjoyment of the suit property.

**1) The Gist of Petition is follows:**

The Petitioner/plaintiff is father Velu Aasari had two wife's. 1<sup>st</sup> wife Alagammal and 2<sup>nd</sup> wife Ayyammal. The petitioner/plaintiff and his two brothers are the sons of Alagammal. After death of Alagammal the Petitioner/plaintiff's father married Ayyammal. In the year 1981 Ayyammal had purchased the property in S. No. 314/2G at A. Pudupatti village in Doc. No. 514/1981 on 26.03.1981 to the extent of 6 cents. Thereafter Ayyammal had sold a 2 cents and the remaining 4 cents were jointly possessed and enjoyed by Ayyammal and her families. The Ayyammal died on 1995 and also Velu Aasari died on 1997. During the lifetime of Ayyammal, S. No. 314/2G to the extent of 4 cents were equally divided in 3 portions. The petitioner/plaintiff and his two brothers were allotted one portion each. The petitioner had constructed in his portion in his own funds and living in the suit schedule property and separate door no. 3-4-127A for more than 20 years without any interruption and also regularly paid Revenue taxes and others. The petitioner's brother Karuppaiah died on 2017. Thereafter, the 1<sup>st</sup> defendant is the son of Karuppaiah has been creating several troubles to the petitioner on the basis of a gift deed is alleged to executed by the 1<sup>st</sup> Defendant's father namely Karuppaiah in favour of the 1<sup>st</sup> Defendant herein registered as document No. 3496/2013 dated 12.09.2013 in entire property of Ayyammal to the extent of 4 cents and the same is forged one. Because in the wife of 2<sup>nd</sup> defendant Kodiarasi filed a Civil Suit before the District Munsif Madurai Taluk Court, Madurai in O.S. No. 59/2000 in respect of entire property in Survey No 314/2G against petitioner and his two brothers and the

same decreed on 4.2.2002 with a finding that the petitioner and Karuppaiah and 2<sup>nd</sup> defendant are having equal share(1/3) in entire property in S. No. 314/2G to the extent of 4 Cents. 1<sup>st</sup> defendant's father Karuppaiah and 2<sup>nd</sup> defendant herein had filed appeal before the Principal Sub Court, Madurai in A.S. No. 244/2002 and the same was also dismissed on 30.12.2003. The 1<sup>st</sup> Defendant and his father Karuppaiah colluded with each other and have created the fraudulent gift deed in entire property in Survey No. 314/2G to the extent of 4 cents with intent to grab the suit property from petitioner. The petitioner is not a party to the gift deed and is against the civil court decree in A.S. No. 244/2002 in OS 59/2000. Hence the petitioner cannot seeking any relief for declaring the said gift deed as void. Now the defendants are trying to occupy suit schedule from all sorts of method the 1<sup>st</sup> defendant filed O.S 97/2015 before this court for seeking declaration and recovery of possession of the suit property and subsequently the same was withdrawn by the 1<sup>st</sup> defendant on 24.10.2017. The defendants have voluntarily created several problems to the petitioner to vacate suit schedule property. The 1<sup>st</sup> defendant instigated the Surveyor and other revenue official to survey the suit schedule property and they were trying to enter into the suit scheduled of property without giving any notice and without following process of law. Thereafter, the petitioner has filed writ petition before Hon'ble High Court, Madurai in W.P. No. 5679 of 2018 for seeking direction not to survey or fix any boundaries in the S. No. 314/2G, Door No. 3/4/127A. A. Pudupatti Village and same is pending. In the mean time the defendants were attempting to vacate the suit schedule property on 15.3.2018 The

petitioner gave a complaint to the Alanganallur Police Station against the defendants and the same was closed after warning the defendants. Thereafter, on 19.03.2018 the defendants have attacked petitioner and his wife and they have sustained severe blood injuries. In this regard a criminal case was registered in Cr. No. 95/2018 in Alanganallur Police Station against the defendants. The defendants are no regard people for law, now attempting to enter the suit schedule property. Hence the petitioner filed this original suit. The petitioner have a prima faice case in favour by the person in possession and balance of convenience is also in favour and all there is evidence that respondents is attempting to disturb petitioner's possession. The petitioner will put into irreparable loss and Hence the petition for Ad- interim injunction against the respondents/defendants. Hence this petition is filed.

## **2. COUNTER OF RESPONDENTS/DEFENDANTS:**

The petition is not maintainable in law. It is liable to dismiss. The petitioner is residing in the Door No. 3/4/127A is false. The suit properties are three house bearing Door no. 3/4/125, 3/4/126, 3/4/127 and house tax assessment for house properties are assessed in 1<sup>st</sup> defendant by special Officer, அழகாபுரி ஊராட்சி அலங்காநல்லூர் ஊராட்சி ஒன்றியம். Therefore there is no such Door No. 3/4/127A. The petitioner created fraudulently document of property tax receipt. It is true that Velu Aasari had two wives. Alagammal is the first wife and Ayyammal is the second wife. It is true that Velu Aasari's 2<sup>nd</sup> wife Ayyammal had purchased 6 cents in Survey No. 314/2G at A. Pudupatti Village dated 26.03.1981 Doc. No. 514/1981 and Ayyammal sold out 2 cents. The remaining portion of 4 cents Ayyammal

exclusively possession and enjoyment of the suit property. During the month of January 1986 the Ayyammal leased out the suit property to the petitioner for a month rent of Rs. 50/ Since the petitioner refused to pay rent to Ayyammal she terminated his tenancy through a notice dated 2.5.1989 and filed in O.S No. 151/1992 before Madurai Taluk Munsif Court for declaration and recovery of possession along with damage for the petitioners use and occupation of the suit property. The suit was decree on 8.8.1994 in favour of Ayyammal. The petitioner without any objection and without any appeal obeyed the decree and vacated the suit property. However, suppressing the above suit in O.S. No. 151/1992 the petitioner has filed this Suit with fraudulent intention to grab the suit property. Ayyammal died on 30.12.1992 leaving behind here husband velu Aasari as her only legal heir. After the death of Ayyammal, Velu Aasri had acquired absolute title over the 4 cents including the suit property. On 6.4.1993 Velu Aasari executed a registered will in favour his elder son Karuppaiah. Velu Aasari died on 18.11.1995 hence his will came in to force and Karuppaiah acquired the entire 4 cents including the suit property as absolute title holder. Karuppaiah got separate revenue patta in Patta No. 1085 and enjoyed the entire 4 cents including the suit property as absolute owner. Karuppaiah executed to 1<sup>st</sup> defendant a registered settlement deed in favour me on 12.09.2013 and the 1<sup>st</sup> defendant got separate patta in Patta No.1129 and in possession and enjoyment of the entire 4 cents as absolute owner. The allegation that the confirmation of the decree in O.S 59/2000 is the confirmation of the alleged allotted 1/3 share of the petitioner is totally not sustainable in law. The whole

proceeding in O.S. No. 59/2000 is judgment in personam and it is only for Kodi Arasu, who is the petitioner in the above suit. The above decree and judgment is not judgment in rem, where the petitioner cannot take advantage from the suit. The petitioner is one of the defendant in the above suit in the written statement admitted the registered will dated 18.11.1995 executed by Velu Aasari. Now the petitioner is estoppels from denying the will date 18.11.1995. The petitioner had accepted the settlement deed dated 12.09.2013 and stopped his illegal trespass in the suit property due the compromise arrived between the 1<sup>st</sup> defendant and petitioner. Due to the reason the suit filed in O.S No. 97/2015 is dismissed as settled out of court. The allegation that 1<sup>st</sup> defendant have filed the above suit for declaration and Recovery of possession is false. The petitioner is not in the possession of the suit property. Therefore the allegation that respondents are attempting to vacate the petitioner on 15.,03.2018 is the false allegation made by the plaintiff. The petitioner with his money and political power influenced the local police and made false complainant against the respondents, which will not sustainable in the court of Law. The petitioner have no prima facie case the balance of convenience is lies only in favour of respondents. If this petition is allowed the respondents will be put to great loss and injury. Hence this petition is dismissed.

3) Now the points for consideration is whether this petition has to be allowed or not?

4) Heard both side. Perused records. This petition has been filed by the petitioner/plaintiff for seeking the relief of temporary injunction. On perusal of

pleadings of both sides and exhibits marked on the side of petitioner admittially the suit property is belongs to one Ayyammal and she was purchased the suit property in the year of 1981. Further both parties admitted in their pleadings that the petitioner/plaintiff's father Velu Aasari had two wives namely Alagammal and Ayyammal and during the married life of Velu asari and Alagammal they had three male children namely this petitioner Narayanan and 1<sup>st</sup> respondent's father Karuppaiah and 2<sup>nd</sup> respondent Velmauyel. Admittedly the 2<sup>nd</sup> wife Ayyammal had no issue and she was dies on 1992. The content of the petitioner's case is during the life time of Ayyammal the suit property had been divided in to three equal shares and allotted to the petitioner and his two brothers namely 1<sup>st</sup> respondent's father Karuppaiah and 2<sup>nd</sup> respondent Velumayel. But in his regard no proof produced on the side of petitioner. But on perusal of Ex. P4 the 1<sup>st</sup> respondent categorically admitted that

'தாவா சொத்தானது பட்டா எண். 1129 சர்வே எண். 314/2Gல் உள்ள 4 செண்டல் கட்டுப்பட்ட வடபுரம் உள்ள 10 அடியாகும். மேற்படி 10 அடியை பிரதிவாதியானவர் ஆக்கிரமிப்பு செய்ய முயற்சி செய்து வருகிறார். வாதியானவர் வியாபாரம் செய்து வருகிறார். வாதியானவர் வியாபாரத்திற்கு வெளியூர் சென்ற நேரத்தில் மேற்படி பிரதிவாதியானவர் தாவா சொத்தில் வடபுரம் 4X10 அடியை கடந்த 9.6.2015ம் தேதியன்று ஆக்கிரமிப்பு செய்ய முயற்சி செய்தார்.'

Further the 1<sup>st</sup> respondent admitted that the petitioner had occupied the portion of the suit property on the basis of lease deed which was executed by the Ayyammal and dispute had been arosed between them regarding the termination of lease and suit proceedings initiated by the above said Ayyammal in OS No.

151/1992 and the decree was passed on 8.8.1994 in favour of the above said Ayyammal. Further the respondent stated that on the basis of above said decree passed in OS No. 151/1992 the petitioner vacate the suit premises. But in this regard no document produced by the both parties. Further in view of the above such facts and circumstances it is crystal clear that the petitioner had occupies the portion of the suit property and Ex. P16 house tax receipts corroborate the same.

5) Per contra the respondent stated that after demising of the Ayyammal her huspand Karuppaiah acquired the suit property and he executed a will infavour of 1<sup>st</sup> respondent's father on 06.04.1993 and the above said 1<sup>st</sup> respondent father also died in the year of 1995. Hence the above said wills came into the force and the 1<sup>st</sup> respondent's father became a full pledged owner of the suit property. Subsequently he executed the settlement deed in favour of 1<sup>st</sup> respondent on 12.09.2013. But on perusal of records, the above said will was not accepted through court of law in the proceedings of OS No. 59/2000. The above said judgment copy of OS No. 59/2000 was marked as Ex. P2. It clearly shows that 'Therefore the defendants miserably failed to prove the will as per law. Further the above said Judgment was confirmed by the apex court in AS No. 244/2002 on 30.12.2003. The copy of the above said appeals decree was marked as Ex. P5 by the petitioner. But the respondent stated that above said Judgments are operate as personam and not in rem, hence it cannot bind the respondents. But the above said respondent's plea cannot be sustainable either in facts or law. Further on perusal of counter statement filed by the respondents there is no averments regarding the any second appeal initiated against

the judgment of AS No. 244/2002 by the 1<sup>st</sup> respondents.

6) Further on perusal of settlement deed dated 12.9.2013. Which was executed by the 1<sup>st</sup> respondents further in favour of 1<sup>st</sup> respondent in respect of suit property there is no averments mentioned regarding the will dated 06.04.1993. Moreover the father of the 1<sup>st</sup> respondent categorically stated in the settlement deed as 'இதனடியில் சொத்து விபரத்தில் குறிப்பிட்டுள்ள சொத்து எனக்கு பூர்வீக பாத்தியப்படும்" Further the 1<sup>st</sup> respondent did not mentioned in the pleadings of suit proceedings in OS No., 97/.2015 regarding the above said will. Further the above said suit was withdrawn by the 1<sup>st</sup> respondent on the basis of settled out of court. But no documents produced by the 1<sup>st</sup> respondent to prove the same. Hence the 1<sup>st</sup> respondent cannot take plea that the suit property acquired on the basis of will dated 12.9.2013. But that factum also can be decided after conclusion of trail.

7) Further as per the Ex P7 to P9 and Ex P11 it is clearly shows that the petitioner continuously gave a police complaint to protect their rights and FIR was also registered against the 1<sup>st</sup> respondents as per Ex. P12. Hence it is shows that some disturbance is existing in the possession and enjoyment of the suit property by the petitioner/plaintiff. Further no documents produced by the 1<sup>st</sup> respondents to prove his possession and enjoyment of the suit property. Hence whether the petitioner's possession and enjoyment of the suit property is lawful or not can be decided after conclusion of trail only. Hence the petitioner's right should be protect till the disposal of main suit. Further the petitioner also filed writ petition in WP No. 5679/2018 before the Hon'ble High Court of Madras at Madurai Bench and it is still

pending.

8) Hence in view of the above such facts and circumstances and pleadings of both parties and exhibits marked on the side of petitioner, this court things that the prema facie case and balance of convenience made out in favour of petitioner and if this petition is not considered another so many proceedings may be arise between the both parties and the petitioner may acquire irreparable loss in respect of enjoyment of the suit property. Hence this petition liable to be allowed. Accordingly this petition is allowed.

In the result this petition is allowed and the order of Temporary injunction granted till the disposal of the suit restraining the Respondents/Defendants, their men, agents and servants from in any way interfering with the petitioner's peaceful possession and enjoyment of the suit property. No cost.

Dictated to the Steno Typist typed by her directly on the computer, corrected and pronounced by me in the open court this the 1<sup>st</sup> day of October 2019.

(Sd.D. Ramganesh)

District Munsif,  
Vadipatti.

**Petitioner side witness: Nil**

**Petitioner side Documents:**

1. Ex.P1. - Sale deed dated on 04.04.1981-xerox
2. Ec.P2 - Judgment copy in OS No. 59/2000 On 04.02.2002-xerox
3. Ex.P3 - Gift deed dated on 12.09.2013- xerox
4. Ex.P4 - OS 97/2016 Plaint copy

5. Ex.P5 - AS 244/2022 judgment copy on 30.12.2003
6. Ex.P6 - Decree copy in OS 97/2015 on 24.10.2017
7. Ex.P7 - Police complaint on 23.02.2018-xerox
8. Ex.P8 - Police complaint on 23.02.2018-xerox
9. Ex.P9 - Police complaint on 23.02.2018xerox
10. Ex.P7 - W.P (MD) No. 5679/2018 petition and Affidavit  
on 23.02.2018-xerox
- 11 Ex.P11 - Police complaint on 15.3.2018- xerox
- 12 Ex.P12 - FIR copy on 21.3.2018
- 13 Ex.P13 - GRH OP receipt- original
- 14 Ex. P14 - Ration card- xerox
- 15 Ex. P15 - Adthar card – xerox
- 16 Ex. P.16 - House tax receipts – 4 Nos
- 17 Ex. P.17 - Photos and CD

**Respondents side Witness: Nil**

**Respondents side Documents: NIL**

(Sd.D. Ramganesht)

District Munsif,  
Vadipatti.

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