

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

**Present : Thiru. M.P. Ramkishore, B.E., BL., (Hon's)**

District Munisf, Vadipatti

**Dated this the 24<sup>th</sup> day of July 2025**

**CNR No. TNMD190000812025**

**IA. No.02 / 2025**

**In**

**O.S. No.80 /2025**

\*\*\*\*\*

R. Pushpam,  
W/o. Ramu

---- Petitioner / Plaintiff

***//Versus//***

1. S. Rajangam,  
S/o. Sonaikonar
2. R. Vasanthi,  
W/o. S. Rajangam

---- Respondents / Defendants

This petition was filed before this Court on 26.06.2025 coming before me for final hearing on 24.07.2025, Advocate Thiru. R. Vijayagopal appeared for Petitioner / Plaintiff. Advocate Thiru. K. Santhanakaruppasamy appeared for the Respondents / Defendants. Upon hearing the arguments advanced by both the sides' counsel and upon perusing the available material records, today this Court has delivered the following....

**ORDER**

1. The petitioner had filed this petition under Order XXXIX Rule 1 & 2 of CPC to grant temporary injunction restraining the respondents, their men, agents or any other person acting under them from in any manner interfering with petitioner's peaceful possession and enjoyment of the petition property pending disposal of the suit.

2. **Petitioner averments in brief:**

The relevant portion of the petition was that the petitioner was the plaintiff in the main suit, The main suit was filed for declaration, recovery of possession, mandatory injunction and permanent injunction. The petition contention was that the petition property was located in Sholavandhan Village to an extent of 54 sq.ft. belong to this petitioner. this piece of land was left vacant by the petitioner to maintain the southern side wall of the petitioner's house. The respondent was the adjacent land owner and he attempted to construct a building by encroaching the southern wall of the petitioner, including the 2-feet-wide and 27-feet-long vacant petitioners vacant area on the east side of the petition property and also threatened this petitioner with rowdy elements. It was informed to the police. Though the respondent did not give up his illegal activities, hence the petitioner filed this suit and filed this petition for temporary injunction.

3. **Counter averments in brief:** (Written statement of R1 and R2 adopted as counter)

In the counter the respondents denied all averments in the petition and stated that the property vested on the south side property of the petitioner belong only to the 1<sup>st</sup> respondent. Previously the petitioner had filed an Original suit in O.S. No.228/2005 before the District Munsif Court, Thirumangalam seeking the relief of

declaration and mandatory injunction for the very same property in this suit schedule. Wherein a compromise decree was passed on 31.01.2006, in respect of the the southern side wall of the suit property. From then the southern side wall of the suit property was in joint possession of the 1<sup>st</sup> respondent and this petitioner. But the petitioner suppressed the above facts and filed this vexatious suit to prevent this 1<sup>st</sup> respondent from constructing a house in his land. Thereby the petitioner did not have prima facie case to file this petition as there was no cause of action arose to file this suit. Further the 2<sup>nd</sup> respondent was the unnecessary party to the suit. Thereby the suit is liable to be dismissed against this 2<sup>nd</sup> respondent on the ground of mis-joinder of the party to this suit. Thus this petition filed only to delay the suit proceedings, it is liable to be dismissed.

4. The petitioner to prove her case had not let in any evidence on her side. The respondents let in evidence on their side and further marked documents from Ex.R.1 to R.7; Ex.R.1 and 2 were the Sale deeds in the name of Aavadaiyammal and the 1<sup>st</sup> respondent dated 28.03.1951 and 08.10.1982, Ex.R.3 and 4 were the pattas in the name of Aavadaiyammal and the 1<sup>st</sup> respondent, Ex.R.5 to 7 were the House tax receipts in the name of 1<sup>st</sup> defendant, Ex.R.8 was the plaint in OS. No.228/2005, Ex.R.9 was the Commissioner report filed in OS. No.228/2005, Ex.R.10 was the compromise agreement deed dated 29.01.2006, Ex.R.11 was the compromise petition filed in I.A. No.134/2006 dated 31.01.2006, Ex.R.12 was the decree in OS. No.228/2005, Ex.R.13 was the judgment in O.S. No. 228/2005.

5. **THE POINT FOR CONSIDERATION IS THAT:** Whether the petition is liable to be allowed or not?

i. Heard both sides and records perused. The petitioner had filed the main suit seeking the relief of declaration, recovery of possession, mandatory injunction and permanent injunction. This petition was filed for temporary injunction to restrain the respondents and their men from disturbing the plaintiff's enjoyment in petition property till disposal of main suit. The case of the petitioner was that she was in the present possession of the petition property and the 1<sup>st</sup> respondent was trying to construct his house by encroaching the petition property. The 1<sup>st</sup> respondent deny the petition by stating the petitioner did not land next to the southern wall of her house, this was already decided in the previous suit that was filed by the petitioner.

ii. The petitioner to prove her case had not let in any evidence on her side. The respondents had marked Ex.R.1 to Ex.R.7 on their side.

iii. Regarding the relief of temporary injunction our Hon'ble High Court in **Ms. Archana Bansal vs. NEPC India Limited and Another, (2007) 6 MLJ 648** has held that,

*"12. Grant or refusal of temporary injunction is subject to the following principles:*

*(a) Prima facie case of plaintiffs legal right*

*(b) Balance of convenience in his favour*

*(c) Whether he would suffer irreparable injury if injunction is not granted.*

*These conditions have to be satisfied and proof of any of them is not by itself sufficient to obtain a temporary injunction. Prima facie case means that there exists a strong probability that the petitioner has an ultimate chance of success in the Suit.*

*Balance of convenience is the principle by which the Court weighs and balance the mischief or inconvenience to either side. Irreparable injury means a substantial injury which cannot be adequately compensated for in damages.."*

Thus as directed by our Hon'ble High Court, to obtain the relief of temporary injunction, the petitioner must prove all the above mentioned principles, that the petitioner has prima facie case, balance of inconvenience and not granting temporary injunction would result in irreparable loss and injury.

iv. As this petition is for temporary injunction, the prima facie case of petitioners needs to be proved. To prove the prima facie case, the petitioner had to prove her right for 2 feet vacant land next to the southern wall of her house but the petitioner did not filed any documents in the proceeding. On the other hand the respondents filed 7 documents to prove their contentions. The respondents main contention was that the petitioner do not have any land next to her southern wall of the house, even the southern wall was a common wall of the petitioner and the defendant. Thus it is clear that the respondent had denied the entire petition claim. In such scenario, the burden of proof to prove the presence of prima facie case, balance of inconvenience and irreparable loss and injury to get temporary injunction is on the petitioner. But the petitioner did not let in any evidence and thereby failed to prove the same.

v. On perusal of the respondent side documents; Ex.R.1 and 2 were the Sale deeds in the name of Aavadaiyammal and the 1<sup>st</sup> respondent dated 28.03.1951 and 08.10.1982, Ex.R.3 and 4 were the pattas in the name of Aavadaiyammal and the 1<sup>st</sup> respondent, Ex.R.5 to 7 were the House tax receipts in the name of 1<sup>st</sup> defendant, Ex.R.8 was the plaint in OS. No.228/2005, Ex.R.9 was the Commissioner report filed in OS. No.228/2005, Ex.R.10 was the compromise agreement deed dated 29.01.2006, Ex.R.11 was the compromise petition filed in I.A. No.134/2006 dated 31.01.2006,

Ex.R.12 was the decree in OS. No.228/2005, Ex.R.13 was the judgment in O.S. No. 228/2005.

vi. Among the above documents the commissioner report filed as Ex.R.9 goes to show that next to the southern wall of the plaintiff, the defendants house was present at that time. Further from Ex.R.11, 12 and 13, it is clear that a suit in O.S. No. 228/2005, was instituted by the petitioner against the respondent regarding her southern side wall and the above suit was disposed through compromise decree by declaring the wall as a common wall for the petitioner and the respondent herein. In such scenario, the petitioner ought to have prove that she possess the vacant land next to her southern wall. But the petitioner did not prove the same.

vii. Thus, applying the above dictum in the case on hand and from the foregoing discussions, it can be seen that the petitioner had not establish the prima facie case, balance of inconvenience and irreparable loss. To obtain the relief of temporary injunction, the petitioner must prove the principles laid down by our Hon'ble High Court but the petitioner has not proved those principles. Hence, injunction would not be granted.

6. **In the result**, this petition is dismissed. No costs.

*Directly dictated to the Stenographer and computerized, error checked and pronounced in the open court on 24<sup>th</sup> day of July 2025.*

District Munsif,  
Vadipatti.

**Petitioner side evidence and documents : Nil**

**Respondents side evidence : Nil**

**Respondents side documents:**

Ex.R.1	Sale deed in the name of Aavadaiyammal dated 28.03.1951
Ex.R.2	Sale deed in the name of 1 <sup>st</sup> respondent dated 08.10.1982
Ex.R.3	Patta in the name of Aavadaiyammal
Ex.R.4	Patta in the name of 1 <sup>st</sup> respondent
Ex.R.5	House tax receipts in the name of 1 <sup>st</sup> defendant
Ex.R.6	House tax receipts in the name of 1 <sup>st</sup> defendant
Ex.R.7	House tax receipts in the name of 1 <sup>st</sup> defendant
Ex.R.8	plaint in OS. No.228/2005
Ex.R.9	Commissioner report filed in OS. No.228/2005
Ex.R.10	Compromise agreement deed dated 29.01.2006
Ex.R.11	Compromise petition filed in IA No.134/2006
Ex.R.12	Decree in OS. No.228/2005
Ex.R.13	Judgment in O.S. No. 228/2005

District Munsif,  
Vadipatti.

DISTRICT MUNSIF COURT  
Vadipatti  
*Fair Order/~~Draft Order~~*  
*IA. No.2/2025*  
*In*  
*O.S. No.80/2025*  
**Date : 24.07.2025**