

IN THE COURT OF DISTRICT MUNSIF, VADIPATTI, MADURAI DT.**Present :** Thiru. M.P. Ramkishore, B.E., BL., (Hon's)

District Munisf, Vadipatti

Dated 10th day of September 2024**IA. No.633 / 2022****In****O.S. No.146 / 2022**

P. Dhanasekaran,
S/o. Pitchai,
Vadipatti Taluk, Madurai District.

---- *Petitioner/ Plaintiff****//Versus//***

1. P. Kannan @ Thirupathi,
S/o. Pitchai,
Vadipatti Taluk, Madurai District.
2. Guganraj,
S/o. P. Kannan @ Thirupathi,
Vadipatti Taluk, Madurai District.
3. Saranraj,
S/o. P. Kannan @ Thirupathi,
Vadipatti Taluk, Madurai District.

---- *Respondents / Defendants*

This petition was filed before this Court on 30.09.2022 coming before me for final hearing on 10.09.2024 Advocate Thiru. M. Venkatesan appeared for Petitioner / Plaintiff, Advocate Thiru. K. Santhanakaruppasamy appeared for the R1 to R3 / D1 to D3. 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. GIST OF THE PETITION:

The relevant portion of the petition in brief, the petitioner herein was the plaintiff in the main suit. The main suit was filed for permanent injunction. The petition averments was that, the petition 1st schedule property was purchased by one Mr. Pitchai vide sale deed no.2466/1969. The said Pitchai was the father of the petitioner and the 1st respondent. The 2nd schedule property was part of the 1st schedule property. In the year 2000, the properties of Pitchai was orally partitioned and accordingly the 2nd schedule property was allotted to the petitioner. From the date of oral partition, the petitioner was in possession and enjoyment of the 2nd schedule property. Again on 13.06.2005, the petitioner, his father Pitchai and the 1st respondent had entered into a family settlement. Even according to that settlement, the petition 2nd schedule property was allotted to the petitioner. Being so, the petitioner's father died in the year 2014. After that, the 1st respondent started to claim the 2nd schedule property belongs to his minor sons and attempted to evict the petitioner from the 2nd schedule property. Further on 11.02.2022, the 1st respondent threatened the petitioner and tried to demolish the petition property by using JCB. The petitioner informed it to the police and they advised to file civil suit. Hence, the petitioner filed this suit and this petition was filed seeking temporary injunction.

3. GIST OF THE COUNTER (The respondent adopted the written statement as counter):

In the counter, the respondents denied the entire petition facts and contended that the petition property was bequeathed to the 2nd and 3rd respondents by their grandfather Pitchai by registered will. Hence, they were the owners of the property. The petitioner and his family were permitted to reside in the property. The respondents asked the petitioner to

vacate the property. The petitioners denied to vacate and also denied the title of the respondents. In the meantime, the 2nd respondent relinquished his right over the property and the property become the absolute property of the 3rd respondent. The respondents had filed a suit for declaration and recovery of possession against the petitioner. Hence, the present petition had no cause of action and the respondents prayed to dismiss the petition along with cost.

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

i. Records perused. The petitioner had filed the main suit seeking for the relief of permanent injunction. This petition is filed for temporary injunction to restrain the respondents and their men from disturbing the plaintiff's enjoyment in petition property. The case of the petitioner is that the 2nd schedule property was allotted to him by oral partition and thereby he was in possession of the property. The respondents were unlawfully trying to evict the petitioner from the property. But he respondents deny the petition facts by contending that the 3rd respondent was the owner of the property and they have already filed a suit for declaration and recovery of possession.

ii. In order to substantiate the petitioner's contention, the petitioner had filed 36 documents and the respondents did not file any documents.

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 he has prima facie case, balance of inconvenience and not granting temporary injunction would result him irreparable loss and injury.

iv. As this petition is for temporary injunction, the possession of the petitioner in the petition property, needs to be proved. To prove the possession, the petitioner had filed 36 documents with the petition. Whereas, the respondents admit that the petitioner was in the possession of the property but contend that possession was initially permitted one and later it become unlawful. Since the respondents had admitted that the petitioner was in possession of the house property, there was no dispute between both the sides regarding the present possession of the petition property. Thus this Court concludes that, the petitioner had proved prima facie case right for granting temporary injunction.

v. The petitioner had pleaded that the respondents tried to evict the petitioner unlawfully, by making threats and attempted to demolish the building using J.C.B. The Petitioner had filed police complaint with CSR receipt and photographs of the property to prove the unlawful disturbance made by the respondents. The petitioner also pleaded that the respondents damaged the stair case and bathroom. On perusal of entire documents filed by the petitioner, to prove the disturbance caused by the respondents, the complaint made police and the photographs did not disclose that damage was made in the suit property as pleaded in the petition. Hence it is clear that, the petitioner did not let in any evidence to substantiate his pleadings. On the other hand, the respondents totally denied the petitioner's contention and pleaded that the respondents did not follow any unlawful means but had filed

a suit for recovery of possession against the petitioner. Thus the petitioner did not substantiate that, the respondents tried to evict the petitioner unlawfully, but the respondents had pleaded that they had filed a suit to evict the petitioner from the petition property. Hence, the petitioner did not proved that the respondents caused unlawful disturbance. Thus in such circumstance, this court cannot find any balance of inconvenience, in favour of the petitioner / plaintiff. Regarding irreparable loss and injury, from both the side pleading it is evident that, the title of petition property in in dispute. Further, the petitioner had not let in any piece of evidence to show that if the injunction is not granted, it would cause irreparable loss to the petitioner. Thus, applying the above dictum in the case on hand and from the foregoing discussions, it can be seen that the petitioner had not established balance of inconvenience and irreparable loss. Hence, injunction would not be granted.

5. *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 ***10th day of September 2024.***

District Munsif,
Vadipatti.

Petitioner side witness documents: Nil

Petitioner side documents:

1.	Rough Sketch
2.	Sale deed vide doc. no.2466/1969, dated 10.12.1969
3.	Partition deed, dated 13.06.2005
4.	Death Certificate, dated 16.09.2014
5.	Property tax bill (No.5)
6.	Property tax bill (No.5)
7.	Property tax bill (No.5)
8.	Old ration card for the period of 2005 - 2017
9.	New ration card for the year 2018

10.	Aadhar card
11.	Aadhar card
12.	Aadhar card
13.	Voter ID
14.	Voter ID
15.	Voter ID
16.	Bank pass book
17.	Bank pass book
18.	Bank pass book
19.	Gas bill
20.	Gas bill
21.	Gas bill
22.	Postal letter, dated 18.12.2017
23.	Postal letter, dated 25.11.2020
24.	Postal letter, dated 15.02.2022
25.	Postal letter, dated 17.02.2022
26.	Postal letter, dated 22.02.2022
27.	Postal letter, dated 27.02.2022
28.	Postal letter, dated 09.03.2022
29.	Postal letter, dated 16.02.2022
30.	Postal letter, dated 24.02.2022
31.	Postal letter of Executive officer, Palamedu, dated 03.03.2022
32.	Acknowledgment card, dated 04.03.2022
33.	Acknowledgment card, dated 09.03.2022
34.	Acknowledgment card, dated 10.03.2022
35.	Complaint letter and CSR of palamedu police station, dated 11.02.2022
36.	Photocopies of 2 nd schedule property (Nos.2)

Respondents side witness and documents: Nil

District Munsif,
Vadipatti.

Fair Order / ~~Draft Order~~

DISTRICT MUNSIF COURT

Vadipatti

Fair Order/~~Draft Order~~

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In

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Date : 06.09.2024