

**IN THE COURT OF THE III ADDITIONAL DISTRICT JUDGE, SALEM.
PRESENT : Thiru. G.SRI RAMA JEYAM, B.L.,
III Additional District Judge,
Salem.**

Wednesday, the 12th day of July 2023

I.A.No.5/2023 in O.S.No.34/2019

A.Shanmuga Sundaram

..... Petitioner / 1st Defendant

/ Versus /

1. U.Dhanapal (Died)

2. U.Manickam

3. Subathra

4. Kavitha

5. Thilaka

..... Respondents 1 to 5 / Plaintiffs

6. A.Sankar

...Respondent No.6 / 2nd Defendant

This petition came up on 28.06.2023 for final hearing before me in the presence of Thiru.J.Ferozz, Advocate for the Petitioner / 1st Defendant and Thiru.A.Thirunavukarasu, Advocate for Respondent Nos.1 to 5 / Plaintiffs and the 6th Respondent / 2nd Defendant remained exparte in the Suit and upon hearing the arguments of both sides and upon perusing the records and having stood over for consideration till this day, this Court delivers the following

ORDER

1st Defendant in O.S.No.34/2019 is the Petitioner in the present Application, which has been filed under Order 39 Rules 1 & 2 and Sec.151 CPC praying this Court to pass an Order of Temporary Injunction restraining the Respondents from in any way preventing the Petitioner from watering the Coconut Trees, around 400 in number, comprised in the Petition mentioned properties, till the disposal of the above Suit.

2) According to the Petitioner, Respondents 1&2 had initially filed the above Suit seeking the relief of Partition and Separate Possession against the Petitioner and the 6th Respondent. During the pendency of the above Suit, on 26.05.2021, the 1st Respondent died and therefore, his Legal heirs / Respondents 3 to 5 are impleaded as Defendants 3 to 5 in the above Suit. The Petitioner had Planted 400 Coconut Trees in the Petition mentioned properties and those trees and land are under his peaceful possession and enjoyment. The Petitioner had already erected fence around the said Property and the Respondents have got no right to trespass in to the same. That on 18.08.2021, at the instigation of Respondents 3 to 6, the 2nd Respondent, with the help of his henchmen namely Karthikeyan, Rajaji, Selvaraj and Aravindan, had broken open the fence and gate, which were erected by the Petitioner, and trespassed in to the property and they are not allowing the Petitioner to enjoy the same. The 2nd Respondent has not been allowing the Petitioner from watering the Coconut Trees comprised in the Petition mentioned properties. The Criminal Complaints preferred by the Petitioner with the Police authorities did not yield any fruitful result. Therefore, unless there is an Order of Temporary Injunction, it would be difficult for the Petitioner to water the Coconut Trees and as such, this Petition may be allowed.

3) Respondent No.1 is no more.

4) Respondent No.6 remained exparte in the Suit and therefore, Notice to him is dispensed with.

5) The 2nd Respondent has filed a detailed Counter and opposed the above Application. Respondents 3 to 5 have adopted the said Counter and they are also opposing.

6) Now, the Point that arises for consideration in the above Application is that Whether the Petitioner is entitled to the relief of Temporary Injunction as prayed for?

Point:

7) No oral evidence has been adduced by both sides. However, on the side of the Petitioner, Ex.P1 to P4 are marked and on the side of the contesting the

Respondents, Ex.R1 to R8 are marked.

8) Admittedly, the Suit was filed by Respondents 1 and 2 against the Petitioner and the 6th Respondent seeking the relief of Partition claiming that they are entitled to 2/3rd undivided share in the Suit Properties. According to the case of the Plaintiffs, some items of the Suit Properties were purchased by one Uthanda Mudaliar under a registered Sale Deed dated 16.07.1962 and the remaining items of properties were purchased either in the name of the 1st Plaintiff or in the name of the 2nd Plaintiff or in the name of one Angamuthu, who are brothers born to the aforesaid Uthanda Mudaliar.

9) It is their further case that the aforesaid Angamuthu died on 28.01.2018 and the Petitioner and 6th Respondent are his Legal heirs. It is their further case that though, a registered Partition Deed dated 15.12.1971 was entered in to between Uthanda Mudaliar, who passed away on 24.07.2001, and his 3 Sons referred above, the sharers had not taken separate possession of their respective shares and they continued to be in joint possession and out of the joint family funds, Properties were purchased in the names of the aforesaid 3 Brothers and as such, they are entitled to 2/3rd undivided share in the Suit properties.

10) The Petitioner herein has not denied the case of the contesting Respondents that some properties were purchased in the names of the aforesaid 3 Brothers using joint family funds, after the execution of the Partition Deed dated 15.12.1971. The case of the Plaintiffs that after the execution of the aforesaid Partition Deed, the 3 Sons of Uthanda Mudaliar had exchanged their lands with one Ramachandran and Kandhappa Gounder under a registered Exchange Deed is also not denied.

11) It is settled proposition of Law that granting the relief of Temporary Injunction is purely equitable and discretionary and the person who seeks the said relief should come to the Court with clean hands.

12) Admittedly, the Suit was filed on 21.01.2019. Perusal of the Suit Notes Paper would show that the Petitioner/ Defendant No.1 remained exparte and he had

filed a Petition under Order 9 Rule 7 CPC, along with his Written Statement, seeking to set aside the exparte order, only on 20.12.2021.

13) In the Affidavit filed in support of the above Petition, the Petitioner has stated that he had Planted 400 numbers of Coconut Trees in the Petition mentioned properties and he has been in possession and enjoyment over those properties and the Trees. He would further aver that suddenly on 18.08.2021, the 2nd Respondent, at the instigation of Respondents 3 to 5, had trespassed in to the Petition mentioned properties by breaking open the fence and gate, which were already put by him and thereupon, those Respondents have prevented the Petitioner from watering the aforesaid Coconut Trees and enjoying the Petition mentioned Properties peacefully. It is the further case of the Petitioner that several Police Complaints lodged by him did not yield any fruitful result and therefore, the present Application has been filed seeking Temporary Injunction.

14) Though, the Written Statement of the Petitioner was filed before this Court on 20.12.2021, in the said Statement, the Petitioner has not alleged that on 18.08.2021, the 2nd Respondent had trespassed in to the Petition mentioned Properties and he has prevented the Petitioner from watering the Coconut Trees and enjoying the properties peacefully. It is not averred in the Written Statement that with respect to the above incident, the Petitioner has lodged so many Police Complaints and those Complaints did not yield any fruitful result.

15) In the Written Statement, the Petitioner has not averred that the Coconut Trees, 400 in number, were Planted by him in the Petition mentioned properties. He has not averred that the Petition mentioned Properties were fenced by him. Thus, it is very clear that the Petitioner has averred so many new facts in this Petition, which are not pleaded in the Written Statement and it is pertinent to point out here that the omitted facts are allegedly taken place even prior to be filing of the Written Statement. When those facts are allegedly happened on 18.08.2021, why the same are not reflected in the Written Statement filed by the Petitioner is not known.

16) Furthermore, it appears from the Report filed by the Learned Advocate Commissioner that the Coconut Trees, which are standing in the Petition mentioned properties, are aged about 45 to 50 years. From the Affidavit filed by the Petitioner, his age appears to be 53 years. Therefore, the allegation of the Petitioner that the aforesaid Coconut Trees were Planted and raised by him may not be true and correct. Furthermore, the Report filed by the learned Advocate Commissioner would show that the key of the Motor Room, which is available in the Petition mentioned properties, is available only with the Petitioner and he alone had opened and closed it in the presence of the Advocate Commissioner.

17) The aforesaid discussions would show that the Petitioner has not come to the Court with clean hands and the case of the Petitioner seems to be affected by the principle **“Suppressio veri, Suggestio falsi”**. Moreover, though the alleged incident is said to have happened on 18.08.2021, the present Application came to be filed only on 20.02.2023, that is after so much of delay. Reasons for the delayed filing of the above Application is not stated by the Petitioner. Thus, this Court feels that the Petitioner does not seem to be entitled to the relief of Temporary Injunction as prayed for and hence, the above Application deserves to be dismissed.

In result, the above Application shall stand dismissed. No cost.

Dictated to the Steno-Typist, transcribed by her, corrected and pronounced by me in open court, this the 12th day of July 2023.

III Additional District Judge,
Salem.

APPENDIX:

Petitioners' Side Witnesses : NIL

Respondents' Side Witnesses : NIL

Petitioners' Side Documents :

Ex.P1	Photos
Ex.P2	CD
Ex.P3	Photos
Ex.P4	CD

Respondents' Side Documents :

Ex.R1	27.02.2023	Complaint preferred by 2 nd Respondent
Ex.R2	28.02.2023	Electricity service connection details
Ex.R3	28.02.2023	Electricity service connection details
Ex.R4	-	Photos
Ex.R5	-	Photos
Ex.R6	-	Photos
Ex.R7	-	Photos
Ex.R8	28.02.2023	Receipt issued by Amutha Digital Studio & Video

III Additional District Judge,
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