

IN THE COURT OF THE DISTRICT MUNSIF, DEVAKOTTAI**PRESENT : Tmt.R.PREMI, B.A., L.L.B., (Hons).,**

District Munsif, Devakottai

Tuesday, the 7th day of October, 2025**I.A.No.02/2024**

in

O.S.No.04/2024

Boominathan

...Petitioner

-Vs-

Subramanian

...Respondent

This petition is coming before me for final disposal in the presence of Thiru.B.Asaithambi learned advocate for the Petitioner, and Thiru.R.Selvaraj learned advocate for the Respondent. Having heard of both side enquiry and upon perusing the documents, this court do hereby pronounce the following...

ORDER**The petition is filed under Order XXXIX Rule 1,2 and Section 151 of CPC****1. The averments in the petition are as follows:**

1(i). The petitioner is the plaintiff in the main suit. The suit property is an empty housing site to an extent of 200 square feet. The petitioner claims that Kaliyammal is the first wife of late Karuppaiah, and they had the first defendant Subramanian as only heir. After the death of Kaliyammal, he married periyamayagi as his second wife and they had petitioner and the second defendant as legal heirs. Properties belonging to the said late Karuppaiah were not

partitioned and has been enjoyed jointly, while for a majority of property patta was made in the name of first defendant and for some properties patta was made in the name of second defendant and the plaintiff jointly. The petitioner states that the first and the second defendant have built the house in the Vettivayal village even before the natham survey and hence for natham survey number 192/8A, and for the empty land around it patta was granted in the name of the first defendant. The patta change order is produced as document number one and the house tax receipts for the said house and the water tax receipts for the same are produced as document number 2 and 3. Similarly, since the survey number 192/8B was enjoyed by the second defendant by building a house, but for the same was granted in his name. The FMB sketch of the said survey number is produced as document number four. Similarly, the first defendant has built a house in survey numbers 196/8 and 196/9. Hence patta for the same has been granted in his name. The copy of the Adangal Register stating that patta for the suit property was wrongly issued, in the name of 1 and 2 defendant is produced as document number five. The copy of the Adangal Register to show that patta for survey numbers 196/8 and 196/9 is in the name of the first defendant is produced as document number six.

1(ii). The petitioner claims that he has built his house in survey number 192/8A and he has been using the suit property on the southern side of the survey number as a pathway to access his home and the road. Similarly, the second defendant has built a house in survey number 192/8B and has also been enjoying a part of survey number 192/11, which is on the southern side of the survey number 192/8B. The petitioner claims that the first defendant Subramanian has no right or possession over the area in which the suit property is situated. The petitioner claims that since he was out of station for a long time

because of his work, the first defendant has taken advantage of the same and has fraudulently patta in his on his name for the suit property that has been used as a pathway when was given space was left on the northern side, for pathway. The second defendant on gaining knowledge of this has got patta for the land on southern side of house that has been used as a pathway along with the suit second schedule property. The plaintiff claims that he came to know about this only in May 2021. The petitioner claims that patta has been issued wrongfully for survey number 192/12 in favour of first defendant and for survey number 192/11 in favour of second defendant. The petitioner claims that during natham survey patta was granted for all housing sites with pathway. Similarly the suit property was used as pathway by the petitioner. The same has been classified as natham Porampoke during natham survey. Petitioner claims that even when the property has been in his possession, assignment was granted in favour of 1,2 defendants. In persuance of the same, the first defendant has encroached upon the suit properties. The petitioner claims that he has been accessing his house only by the suit properties and also claims that there are no other pathway to access his house. The petitioner also says that the first defendant has also got patta for survey numbers 196/8 and 196/9. Despite this being so without proper investigation, the Government has granted assignment in favour of the first defendant for the first suit property and for the second defendant, for the second suit property. Hence, the petitioner has filed the suit seeking a prayer of declaration, recovery of possession and permanent injunction. The petitioner claims that the defendants are about to encroach the suit properties permanently. Hence he has filed this petition seeking a prayer of temporary injunction until the disposal of suit. Hence he prays for the petition to be allowed.

2. Averments in the counter are as follows:

2(i). The survey number 192/12 is the house of the first defendant. In the said house lives the first defendant and his unmarried daughter. The respondent claims that partition has taken place between the plaintiff and one, two defendants in 1967 and the properties received through the partition were subsequently sold by the Plaintiff and the second defendant. But the petitioner is making false allegation as if partition did not take place. The partition book has been produced as document number one and a note executed subsequent to the partition by the Panchayat produced as document number two. In the said note in 13th para it has been stated that the Vaikkal Karai Thottam in front of the house is to be left for Subramanian ambalam. The said vaikkal Thottam is survey number 192/12. The respondent also says that for more than 40 years, the Patta for the first suit property is in the name of first defendant. Also survey number 192/11 of the second dependent is to an extent of 968 square feet, but the same has been mentioned as 200 square feet. This shows that the plaintiff and the second defendant are colluded. He also says that the plaintiff has acquired the survey number 192/8A by this partition only and hence the fact that the suit property was allowed to the defendant should be known to the petitioner. He also states that there is sufficient pathway for reaching the plaintiff's property. The EB receipts and the house tax receipts for the survey number 192/12 are produced as document number three and four.

2(ii). The respondent claims that the plaintiff and the second defendant have colluded and filed the suit and preventing the first defendant and his daughter from enjoying their own property. Since the respondent is very old and are unable to maintain their cattle because the plaintiff are stating the reason as

suit pending and are not allowing the first defendant to enjoy the property. The respondent claims that the plaintiff has other pathway through which he receives pipeline and EB connections. He also states that the plaintiff has filed the suit in order to cause distress to the first defendant. Hence, he prayed for the petition to be dismissed.

3. Now the question to be decided is whether the petition has to be allowed or not?

3(i). Petition and counter perused. Enquiry heard on both sides. It is the claim of the petitioner that he has been in possession of survey no 192/8A by building a house in it and has been using the suit properties on its southern side as entry and as a pathway to access the cement road on its southern side. He also claims that patta for the suit properties of survey numbers 192/12 and 192/11 was wrongfully issued in the name of first and second defendants. He also claims that taking advantage of the same the first defendant has encroached upon the suit properties and is about to build permanent construction in the same. Hence he has filed in the petition praying for the relief of temporary injunction until disposal of the suit. On the other hand, the respondent denies the averments of the petition and states that he has been in the possession of the property for a very long time and he has received the same through partition. Hence, he prays for the petition to be dismissed. On perusal of both side averments it becomes clear that it is the claim of the petitioner that he has been using the suit property as a path way for a very long time and that the respondent has encroached upon it. Hence the burden to prove this is on the petitioner. It is a well established principle that for a grant of temporary injunction a party must prove that he has prima facie case and that the balance of convenience is in his favour and that if temporary injunction is not granted, it would cause irreparable loss and injury to

him. In the case at hand the petitioner claims to have been using the suit property as a pathway for a very long time. But has not provided any piece of evidence to prove the same. Hence the petitioner has failed to prove that he has the prima facie case. With the primary requirement of prima facie case being unsatisfied, it cannot be stated that this is a valid case for granting temporary injunction. Hence the petitioner has also failed to prove that the balance of convenience in his favour. Since the petitioner has failed to prove the very basic requirement that he has been in possession of the suit property as claimed by him, it cannot be said that not granting temporary injunction would cause irreparable loss and injury to the petitioner. Since the petitioner has not proved the essential factors for granting temporary injunction, the court finds it fit to dismiss this petition. In the end, the petition is dismissed, no order as to cost.

4. Decision

In the end, the petition is dismissed, no order as to cost.

This Order was dictated by me, typed by the steno-typist, corrected by me and pronounced by me in the open court on 6th day of October 2025.

**District Munsif,
Devakottai.**

Annexures:

List of witnesses on the side of the Petitioners-Nil-

List of documents on the side of the Petitioners -Nil-

List of witnesses on the side of the Respondents-Nil-

List of documents on the side of the Respondents-Nil-

**District Munsif,
Devakottai.**

**District Munsif Court,
Devakottai**

IA.No.02/2024

in

OS.No.04/2024

Dated: 07.10.2025

Draft/Fair Order
