

**IN THE COURT OF III ADDITIONAL DISTRICT & SESSIONS JUDGE,
DHARAPURAM****PRESENT : Thiru.S.Nagarajan,M.L.,**III Additional District & Sessions Judge,
Dharapuram.**Monday, the 20th day of February 2023****Thiruvalluvarandu 2053 Subakiruthu Varudam Masi Thingal 08th day****I.A.No. 311 of 2021****in****O.S. No. 511 of 2021**

Nithyachandika

..... Petitioner/Plaintiff

-Vs-

1)N.Balasubramaniam

2)Vishnugaravanarajkumar Presently Vishnuchenduran

3)K.N.Murugesan

4)C.Vimaladevi

..... Respondents/Defendants

This Petition came before me on 06.02.2023 for final hearing in the presence of Thiru.C.Iswaramoorthy, Advocate for the Petitioner/Plaintiff and Thiru.M.Shajahan, Advocate for the 1st respondent, and Thiru.K.Ramesh, Advocate for the 2nd Respondent and Thiru.V.Narayanasamy, Advocate for the 3rd, 5th Respondents and Thiru.M.Marimuthu, Advocate for the 4th, 6th Respondents and Thiru.S.Sriram Kumar, Advocate for the 8th Respondent and Thiru.S.Raveendran, Advocate for the 9th Respondents/Defendants and upon perusing the petition, affidavit, counter and other connected material records and hearing the arguments of both sides and having stood over till this day for consideration, this court pronounce the following:-

ORDER

By this Petition, I shall deal with an application under Order 39 Rules 1 and 2 of CPC for temporary injunction till the disposal of the suit.

2) Brief averments in the affidavit filed by the petitioner in support of the petition :

The suit properties situated at Ponnapuram village Dharapuram Taluk. The 1st defendant is the father of the defendant, the 2nd defendant is the brother of the plaintiff and 3rd and 4th defendants are the maternal relatives of the plaintiff and the 5th and 6th defendants are the close friends. The suit properties allotted under “B” schedule to the 1st defendant by virtue of registered partition deed dated 04.03.1959, which was registered as document No.440/1959, SRO Dharapuram. The suit properties are the joint family properties and the plaintiff and defendant 1 and 2. The plaintiff is the female co-parcener. The 1st defendant is the Kartha of the joint family. Plaintiff is a doctor by profession. The 1st and 2nd defendant are acting against the interest of the plaintiff. The plaintiff is having equal share over the properties allotted under “A” schedule to the 1st defendant through partition deed dated 21.10.1991. The plaintiff got married during the year 2012. The 1st defendant has settled a portion of properties to an extent of 6.13 within RSF No. 868/2A within Ponnapuram Village. The plaintiff demand for partition was not considered. The 1st defendant has Bogusly created a registered a power of Attorney dated 03.05.2007 in the name of the 5th

defendant. With aid of power deed the 1st defendant and the 5th defendant created a sale deed dated 02.08.2010 in the name of the 6th defendant as nominal document. The said transaction does not bind the plaintiff. 1st defendant has sold an extent of Punjai Acre 11.93 in RSF No.889 to the 3rd defendant and she had settled the same in favour of the 4th defendant. The defendants 3 to 6 have created Bogus deed. Hence a temporary injunction may be granted as against the defendants no.1, 2, 5 and 6 till the disposal of the suit.

3) Brief averments in the Counter filed by the 3rd Respondents/Plaintiffs :-

The petition is not maintainable . The allegation of Bogus transaction is denied. The allegations that “A” schedule was allotted through partition to the 1st defendant has to be proved and not admitted. The plaintiff has no share in the suit properties and that is why an extent of 6.13 has been settled in favour of the 1st defendant. The power deed dated 03.05.2007 is valid. The subsequent transaction between the 4th and 5th defendant are valid. The plaintiff right over the suit properties. The plaintiff has not taken any steps from 31.05.2012, the petition has to be dismissed.

4) Brief averments in the Counter filed by the 4th Respondents/Plaintiffs :-

The petition is not maintainable . The allegation of Bogus transaction is denied. The allegations that “A” schedule was allotted through partition to the 1st defendant has to be proved and not admitted. The plaintiff has no share in the suit properties and that is why an extent of 6.13 has been settled in favour of the 1st defendant. The

power deed dated 03.05.2007 is valid. The subsequent transaction between the 4th and 5th defendant are valid. The plaintiff right over the suit properties. The plaintiff has not taken any steps from 31.05.2012, the petition has to be dismissed.

5. Whether the petitioner is entitled to relief of temporary injunction till the disposal of the suit as prayed for ?

6. **The petitioner/plaintiff had contended in the petition as follows:-**

The suit properties situated at Ponnapuram village Dharapuram Taluk. The 1st defendant is the father of the defendant, the 2nd defendant is the brother of the plaintiff and 3rd and 4th defendants are the maternal relatives of the plaintiff and the 5th and 6th defendants are the close friends. The suit properties allotted under "B" schedule to the 1st defendant by virtue of registered partition deed dated 04.03.1959, which was registered as document No.440/1959, SRO Dharapuram. The suit properties are the joint family properties and the plaintiff and defendant 1 and 2. The plaintiff is the female co-parcener. The 1st defendant is the Kartha of the joint family. Plaintiff is a doctor by profession. The 1st and 2nd defendant are acting against the interest of the plaintiff. The plaintiff is having equal share over the properties allotted under "A" schedule to the 1st defendant through partition deed dated 21.10.1991. The plaintiff got married during the year 2012. The 1st defendant has settled a portion of properties to an extent of 6.13 within RSF No. 868/2A within Ponnapuram Village. The plaintiff demand for partition was not considered. The 1st defendant has Bogusly

created a registered a power of Attorney dated 03.05.2007 in the name of the 5th defendant. With aid of power deed the 1st defendant and the 5th defendant created a sale deed dated 02.08.2010 in the name of the 6th defendant as nominal document. The said transaction does not bind the plaintiff. 1st defendant has sold an extent of Punjai Acre 11.93 in RSF No.889 to the 3rd defendant and she had settled the same in favour of the 4th defendant. The defendants 3 to 6 have created Bogus deed. Hence a temporary injunction may be granted as against the defendants no.1, 2, 5 and 6 till the disposal of the suit.

7. On the other hand, the respondent namely the 3rd and 4th respondent who are contesting the said application has stated in the counter as follows.

The petition is not maintainable. The allegation of Bogus transaction is denied. The allegations that “A” schedule was allotted through partition to the 1st defendant has to be proved and not admitted. The plaintiff has no share in the suit properties and that is why an extent of 6.13 has been settled in favour of the 1st defendant. The power deed dated 03.05.2007 is valid. The subsequent transaction between the 4th and 5th defendant are valid. The plaintiff right over the suit properties. The plaintiff has not taken any steps from 31.05.2012, the petition has to be dismissed.

8. Considering the rival submission the plaintiff had stated that the “B” schedule stated in the registered partition deed dated 04.03.1959, which was registered as Document No. 440/1959 and that the 1st and 2nd defendants had purposely entered

into partition deed dated 21.10.1991 behind the back of the plaintiff and that during her marriage in the year 2012, her father namely the 1st defendant had settled an extent of 6.13 in RSF No.868/2A situated at Ponnapuram Village towards marriage expenses. It is stated in the counter that the 3rd defendant had purchased an extent of 11.93 Acre in RSF No.888 and had settled the same favour of the 4th defendant. The suit is originally filed by the plaintiff for the relief of partition and separate possession. The plaintiff has paid the court fee under section 37 (2) of Tamil Nadu Court Fees Act. This petition was filed on 22.09.2021 and that during my predecessor tenure, ad-interim injunction was granted and that it was extended.

9. Taking into consideration all the above aspects, the suit is of the year 2021 and that the plaintiff has brought out a prima facie case and balance of convenience rest with the petitioner as there was some transactions with regard to the suit property. The purchase by the 3rd defendant and the partition of the year 1991 and the settlement of some extent of land in favour of the petitioner are all matter which has to be relegated to the trial. It is to be noted that pending suit there cannot be further encumbrance and that the petitioner would be put to great hardship. In the interest of justice, ad-interim injunction is granted and that both parties shall maintain the status quo as on filing of the suit till the disposal of the suit. Both parties are directed to cooperate for trial.

10. In the result this petition stands partly allowed with the following observations:-

a) ad-interim injunction is granted and that both parties shall maintain the status quo as on filing of the suit till the disposal of the suit;

b) Both parties are directed to co-operate for trial;

c) that there will be no order as to cost;

This order is directly dictated by me to the Stenographer and typed by her directly in the Computer and corrected and pronounced by me in the open Court on this the **20th day of February, 2023.**

III Additional District & Sessions Judge,
Dharapuram

IA.No.311/2021

in

O.S. No. 511/2021

Fair/ Draft Order
Date : 20.02.2023
III ADJ,DPM.