

**IN THE COURT OF THE ADDITIONAL SUBORDINATE JUDGE,
TIRUPPUR.**

**Present :- Thiru. K.R.Kannan,B.A., B.L.
(J.O.Code.TN1220)
Additional Subordinate Judge,
Tiruppur.**

Friday the 18th day of October 2024

I.A. No.2 / 2024

in

O.S.No. 50 / 2024

P. Pandidurai

....Petitioner/Plaintiff

//Vs//

1.R.Nagamani

2. A.Varatharajan

3. The SRO -Thottipalayam

4. The District Collector – Tirupur

5. The Tahsildhar – Tirupur South

.... Respondents/Defendants

This Petition came before me on for the 27.09.2024 for the final hearing in the presence of Thiru.S.Karthick,B.A.,B.L., Advocate for the Petitioner/Plaintiff and Thiru.R.P.Kanagaraju,B.Sc.,M.A.,M.L., Advocate for the 2nd Respondent/Defendant and Thiru.R.Arikaran,B.A.,B.L., Additional Public Prosecutor for the 3rd to 5th Respondents/Defendants and 1st respondent failed to filed the counter set exparte and upon hearing both side arguments, and on perusal of available records, this court delivered the following...

ORDER

1. This petitioner, who is the plaintiff filed this petition under Order XXXIX Rule 1 and 2 & section 151 of CPC to restrain the respondents and their men agents not to execute or to register any fraudulent transfer based upon the collusive decree in O.S.No. 51/2017 relating to the suit property till the disposal of suit as prayed for in the petition with cost.

2. The averments stated in the affidavit filed by the petitioners are as follows:

2.1 The petitioner filed the above suit seeking the relief of declaration, declaring the exparte decree passed by this Hon'ble Sub Court Tirupur in O.S.No. 51 of 2017 as null and void as well as based on the decree, the 2nd defendant obtain the sale deed through court as Document No 300/2024 as null and void and also seeking the permanent injunction over the suit property and the plaint averments may be read as part and parcel of this affidavit.

2.2 The 1st respondent (Nagamani) had conveyed the entire Item 1 and 2 of the suit property to C.Venkatesh by way of Sale deed on 03.06.2013 (1414/2013), subsequent to the sale deed the respondents 1 and 2 didn't have any right, interest (or) title over the suit property, in a deceitful intention suppressing the material facts in a collusive manner had created the fraudulent anti dated sale agreement behind the back of the true title holder and filed the suit for specific performance before the Hon'ble Sub Court Tirupur in O.S.No.51 of 2017 and got the exparte decree and to utilized the same. They had obtain the sale deed through the court on 22.01.2024.

2.3 Whereas the larger extent of suit schedule property was ancestral property of 1.Gurusamy Gounder and 2.Subbaraya Gounder and they were amicably divide the lands, as the terms were crafted on 26.08 1960, as the recital of the partition deed "A" - Schedule property allocated to Gurusamy Gounder in SF No. 114/1-0.80 Acres + 1.50 Acres 3.20 Acres and other lands as well "B" - Schedule property allocated to Subbaraya Gounder, after due verification the partition deed was registered as Document No. 1026 of 1960 The copy of Partition deed dated 26.08.1960 is produced as Plaint Document No. 1 in the list.

2.4. Thereafter said 1.Gurusamy Gounder and his son 2. Krishnamoorthi had conveyed the Item 1 of the suit property in SF.No. 114/181.00 Acres to Ramasamy Gounder by way of sale deed dated 21.05.1984 and registered as document No. 1069 of 1984.

2.5 The afore said Ramasamy Gounder died intestate on 24.01.2003, leaving behind his wife Nagamani (1 Defendant) as his only legal heirs to succeeded the item 1 of the suit property.

2.6 The said 1.Gurusamy Gounder and his kids namely 2.G. Krishnamoorthi, 3.A. Muthulakshmi, 4.R.Nagamani (1st Defendant) had amicably divide the larger part of suit schedule lands. And the terms of division was prepared on 10.11.2008 via partition deed in which "A" "B" Schedule property allocated to A. Muthulakshmi, Schedule property allocated to 1. Gurusamy Gounder & 2.Krishnamoorthi Gounder, "C" Schedule property allocated to Nagamani (1 Defendant) as Item 2 of suit schedule land in SF.No. 114/181-0.50 Acres.

2.7 The 1st respondent Nagamani holding the rights in Item 1 and 2 of the suit property as discussed in Para No.8 to 10 of application. Subsequently the 1st respondent Nagamani has conveyed the Item 1 and 2 of the suit schedule property to C. Venkatesh by way of sale deed dated 03.06.2013.

2.8 Whereas on 12.08.2021 aforesaid C.Venkatesh had conveyed the Item -1 and 2 of the suit schedule property to V.Sivasamy by way of two separate sale deed and it was registered as document Nos. 4076 of 2021 and 4078 of 2021.

2.9 The petitioner purchased the Item - 1 and 2 of the suit property and as the bonafide purchaser followed all the nuance like verifying the title deeds, revenue records, verified encumbrance certificates and also measured the land and finally obtain the legal opinion from advocate, after due verification of title as the bonafide purchaser the petitioner decided to purchase the suit properties on 25.05.2023 on payment of valuable consideration.

2.10 After procured the property the petitioner muted the revenue records in his name and took in possession and enjoyed the properties without any hindrance.

2.11 On 19.09.2023 the 3rd respondent had issued a letter to the petitioner and it was mentioned that the 2nd respondent obtained the decree for specific performance in O.S.No.51 of 2017, as the outcome of the decree the 2nd respondent has filed the execution application in E.P.No.257 of 2018 to execute the decree by way of registering the sale deed. Though the sale deed was presented for registration before SRO Thottipalayam (3rd defendant), while that time as the notification issued by the Registrar general of Tamilnadu in [NA.KA.No. 34930/C1/2019](#) dated 27.02.2023, they should have been verified the encumbrance certificate, title deeds and revenues records before the registration of the Documents. As following the above notification, the 3rd respondent found that the title and revenue records neither stands in the name of decree holder nor the judgment debtor, hence the 3rd respondent sent the letter to me for verifying the genuineness of title.

2.12 After collecting letter the petitioner was shocked and surprised about the court decree, immediately the petitioner collect the suit court papers in O.S.No.51 of 2017 and perused the records then realized that after execution of the registered sale deed by the 1st respondent to C. Vengatesh dated 03.06.2013, that the respondents No. 1 and 2 with a fraudulent intention had collusively created the anti-dated unregistered sale agreement (14.08.2012) between themselves and filed a suit for specific performance based on the falsified statements and suppression of material facts before the Hon'ble Subordinate Judge Court – Tirupur.

2.13 As the face of alleged agreement dated 14.08.2012 shows that the respondent 1 & 2 should accomplish the terms of contract within the stipulated period of 3 months.

2.14 The 1st respondent without having any rights or interest over the Item 1 and 2 of the notice mentioned property intentionally not added the true owners and the petitioner herein.

2.15 Further the Respondents No. 1 and 2 are colluded to each other and concealed and suppressed material facts relating to the suit property, it is an only malalide intention to get the exparte decree from this Hon'ble court which is a right in personam and knowingly created encumbrance over the suit property.

2.16 The petitioner is having prima facie case and the balance of convenience in his favour. So, the petitioner filed this petition to grant a tamper the injunction restraining the respondent or his ajents or anybody not to execute any new fraudulent transfers and not to mutate the revenue records relating to the suit property as prayed for in this petition with cost.

3. The objections raised by the 2nd respondent by way of counter statement is as follows :-

3.1 The 2nd respondent filed a memo on 02.07.2024 stating the written statement may be treated as a counter for this application. On perusal of the same the 2nd defendant denied all the allegations raised in the plaint in para no. 3 to 12 of the written statement.

3.2 The 2nd defendant purchase the suit property by way of an agreement of sale and paid the consideration for the suit property. The 2nd defendant is in possession over the suit property as per the sale agreement dated 14.08.2012. The sale deed in favour of the 2nd defendant was executed by the Court. After execution of the sale agreement in favour of the 2nd defendant 1st defendant sold the suit property. Then, the plaintiff purchased the suit property on 25.05.2023. The vendors of the plaintiffs were not added parties in the suit. The plaintiff has purchased the suit property after the date of the agreement and shown is a subsequent purchaser. The sale deed in favour of the plaintiff is not valid. This suit is not maintainable. The plaintiff has filed the suit against the defendant without any cause of action. The suit is not properly valued. The court fee paid is not correct. Therefore, the 2nd defendant asked this Court to dismiss the suit with cost.

4. The objections raised by the 3rd respondent by way of counter statement is as follows :-

4.1 The 3rd respondent also filed a memo to treat the written statement of the 3rd defendant as counter. The 3rd defendant denied all the allegations stated in para no. 5 to 24 of the plaint. On 14.08.2023 the 2nd defendant executed the decree passed in E.P.No. 257/2018 by way of sale deed and presented it before 3rd defendant for registration. After verifying the revenue documents and encumbrance certificate the schedule mentioned property was found to be in the name of the plaintiff. Whereupon the circular and notification issued by the Tamilnadu government this 3rd defendant needs to clarify the issues regarding the encumbrance certificate reflected in the name of plaintiff (Pandidurai) but whereas the Hon'ble court executed the Sale deed on behalf of Nagamani (1st defendant) and to send a letter to the Hon'ble Court on 19.09.2023, finally accordance with the court decree the 3rd defendant registered the Sale deed in the name 2nd defendant vide Document No. 300 of 2024.

4.2 The defendant further submit that, if the Hon'ble court passes any appropriate order to ensure the title of the suit property that will be record the inventory in our registers and also, this defendant shall comply with the order of this Hon'ble court.

5. The objections raised by the 5th respondent and adopted by the 4th respondent by way of counter statement is as follows :-

5.1 The defendant no. 4 and 5 filed a memo and asked this Court to treat the written statement filed by the 5th defendant as counter.

5.2 The defendant Submit that in Plaint Para No. 5 to 24 are all false and incorrect and the Plaintiff has to prove each and every allegations with proper documentary evidence.

5.3 This defendant submits that, on 14.09.2023 the 2nd defendant executed the decree of the Hon'ble court passed in EP.No. 257 of 2018 by way of sale deed and presented it before 3rd defendant for registration and the said Sale deed were registered in the name 2nd defendant vide Document No. 300 of 2024.

5.4 Further based on the registered instrument without having the knowledge of the present suit this defendant has mutate the revenue records in the name of 2nd defendant. Whereas the affected parties will file appropriate application before concern authorities to modify the Patta as the same as before registered the present suit (i.e.) 05.02.2024 and then to maintain the status quo accordance with law.

5.5 The defendant submits that, we are not aware of the case, we registered the documents as per the title deeds and court order. The defendant further submits that, if the Hon'ble court passes any appropriate order to ensure the title of suit property that will be record the inventory in our registers and also, this defendant shall comply with the order of this Hon'ble court.

6. Both parties have not lead any evidence and on the side of the petitioner Ex.P1 to P.27 were marked and on the side of the respondent no documents were marked.

7. Now the Point for consideration is whether this petition has to be allowed or not ?

7.1 The petitioner herein is the plaintiff in the suit, and the respondents are the defendants in the suit. The parties are discussed in this order as pleaded in the plaint.

7.2 The plaintiff filed the suit and asked this Court to declare the exparte decree passed by this Court in O.S.No. 51/2017 as Null and Void, to declare the sale deed dated 14.09.2023 in the name of 2nd defendant as Null and void and to

cancel the same, to grant a permanent injunction restraining the defendants and their men not to execute any new fraudulent transfers relating to the suit property and asked a permanent injunction restraining the defendants not to mutate the revenue records relating to the suit property based upon the sale deed dated 14.09.2023.

7.3 The learned petitioner counsel has submitted the suit property is absolutely belongs to the plaintiff and he had purchased the same from the lawful vendor's after paying due consideration. The 1st defendant is the vendor of the plaintiff. The 1st defendant in collusion with 2nd defendant created a fraudulent unregistered sale agreement relating to the suit property after the date of purchase of the plaintiff in order to grab the same. The learned plaintiff counsel further argued the plaintiff has produced the copy of the sale deed in favour of the plaintiff and the sale deed of his vendors to show that he is a bonafide purchaser of the suit property. The learned counsel further submitted that after the purchase of the suit property the revenue records were also changed in the name of the plaintiff and he is in peaceful possession and enjoyment over the same.

7.4 The learned plaintiff counsel further argued, based upon the collusive and fraudulent sale agreement the 2nd defendant filed a suit in O.S.No. 51/2017 against the 1st defendant for the relief of specific performance without adding the plaintiff as a party in that suit. The 3rd respondent sent a letter to the plaintiff based upon the encumbrance certificate about the registration of the sale deed as per the order's passed by Principal Subordinate Judge Court in E.P.No. 257/2018 in order to register the sale deed executed by the said Court. Then, only the plaintiff got the knowledge of the fraudulent activities done by defendant no.1 and 2 and came to know the exparte decree passed by this Court in O.S.No. 51/2017 and the order's passed in E.P.No. 257/2018. Then, the plaintiff filed the suit and asked the reliefs in the plaint and by way of this petition the petitioner asked temporary injunction against the respondent's not

to registered any further documents based upon the decree passed in O.S.No. 51/2017. The learned counsel further argued already this Court granted a temporary injunction in favour of the petitioner. The learned counsel further submitted the petitioner has produced all the relevant records to show the petitioner is having a prima facie case and balance of convenience is in his favour. So, he asked this court to allow the petition as prayed for with cost.

7.5 This court has granted sufficient time to the 2nd respondent to submit his arguments. But there is no representation for the 2nd respondent on 21.09.2024 and 27.09.2024. So, this Court directed the 2nd respondent to submit his arguments on or before 04.10.2024. But, the 2nd respondent has failed to submit his objections as pleaded in the counter by way of arguments.

7.6 The learned Government pleader has submitted as per the order's passed by Principal Subordinate Judge Court in O.S.No.51/2017 and E.P.No.257/2018 the revenue authorities has acted upon and they have performed their statutory duty. The learned Government pleader further argued the respondents 3 to 5 who are the revenue authorities are ready to abide the order's passed by this Court in this application and asked this Court pass order's based upon the records.

7.7 The arguments submitted by the learned petitioner counsel, the learned Government pleader and the available records were carefully perused.

7.8 The petitioner who is the plaintiff filed this application to grant a temporary injunction against the respondents not to make any fraudulent transfer and mutation of revenue records relating to the suit property. The petitioner has produced the certified copy of partition deed dated 26.08.1960 as Ex.P1, the sale deed in favour of Ramasamy dated 21.05.1984 as Ex.P2, the partition deed entered between Gurusamy, Krishnamoorthy, Muthulakshmi, Nagamani dated 10.11.2008 as Ex.P5, the sale deed in the name of Venkadesh executed by the 1st respondent dated 03.06.2013 as Ex.P6, the sale deed in the

name of Sivasamy executed by Venkadesh dated 12.08.2021 as Ex.P7, the sale deed dated 12.08.2021 in the name of Sivasamy executed by Venkadesh as Ex.P8. The petitioner also produced the sale deed in his name dated 25.05.2023 as Ex.P.13 and P.14. The chitta extract relating to the 1st item of the suit property is produced as Ex.P15. The xerox copy of the letter sent by 3rd respondent to the petitioner is marked as Ex.P17. The copy of sale agreement entered between defendants 1 and 2 is produced as Ex.P19. The decree and Judgment passed by the Principal Subordinate Judge Court, Tiruppur in O.S.No. 51/2017 is produced Ex.P23 and 24. The petition and order's E.P.No. 257/2018 is marked as Ex.P25. The sale deed dated 14.07.2023 executed in the name of the 2nd defendant on behalf of the 1st defendant by the Principal Subordinate Judge Court, Tirupur is marked as Ex.P27.

7.9 On perusal of the plaint, the plaintiff filed the suit to declare the ex-parte decree passed in O.S.No.51/2017, dated 13.09.2017 as not valid and the same is null and void and further asked a relief to declare the sale deed dated 14.09.2023 in favour of 2nd defendant as null and void and also asked a prayer of permanent injunction against the respondent's not to disturb the peaceful enjoyment of the suit properties and not to mutate the revenue records relating to the suit property.

7.10 In this application on 22.04.2024, after considering the arguments of the petitioner counsel this Court passed an order directing both parties to maintain status quo till the disposal of this application. As per the plaint averments, the plaintiff purchased the suit property from his lawful vendor after paying a valuable consideration as per Ex.P13 and 14 on 25.05.2023. The vendor of the plaintiff V.Sivasamy purchased the suit properties as per Ex.P8. The said V.Sivasamy purchased the suit properties from one C.Venkadesh as per Ex.P7. The said C.Venkadesh purchased the suit properties as per the Ex.P6 from the 1st defendant Nagamani on 03.06.2013.

7.11 As, per Ex.P19 sale agreement dated 14.08.2012 entered between the defendants 1 and 2 this Court came to know the said agreement is an unregistered one. Based, upon the unregistered sale agreement the 2nd defendant filed O.S.No.51/2017 before the Principal Subordinate Judge Court, Tirupur and an Exparte decree was passed on 13.09.2017. Based, upon the exparte decree as per Ex.P25 the 2nd defendant filed an Execution Petition No. 257/2018 for execution of the sale deed as per the decree passed in O.S.No.51/2017. As per Ex.P27 on behalf of the 1st defendant the Principal Subordinate Judge, had executed the registered sale deed in favour of 2nd respondent on 14.09.2023. So in this circumstances, whether the sale agreement entered between defendants 1 and 2 is a fraudulent one and the same was executed after the execution of Ex.P6 and whether the Sale Agreement was created by the defendants 1 and 2 cannot be decided at this stage. All, the said aspects need evidence and this Court has to peruse all the above documents to find out the truth involved in the transactions, only in the trial. So, in this circumstances, in order to avoid further complications in the interest of justice this court hereby comes to a conclusion at present the petitioner has made a prima facie the case and the balance of convenience is also in favour of the petitioner. If, this Court failed to grant the temporary injunction as prayed for in this petition, the petitioner will be put to great loss and much hardship.

7.12 This Court already granted sufficient time to the 2nd respondent to submit his arguments. But, the 2nd respondent failed to submit the objections raised in the written statement by way of arguments. Hence, considering all the above aspects in the interest of justice and in order to avoid further litigation's this court is inclined to grant a temporary injunction restraining the respondents 1 and 2 and their men agents, servants not to execute any further documents relating to the suit property till the disposal of the suit. The respondents 3 to 5 are hereby directed not to make any mutation of records relating to the suit

properties as per the sale deed dated 14.09.2023 infavour of the 2nd defendant till the disposal of the suit.

In the result, this petition is allowed as follows, the respondents 1 and 2 are hereby restrained not to execute any documents as per the decree passed in O.S.No.51/2017 till the disposal of the suit and the respondents 3 to 5 are hereby directed not to make any mutation of records based upon the sale deed dated 14.09.2023. Considering the circumstances there is no order for cost.

Dictated to the Steno-Typist, typed by him directly into the computer, corrected, printed out and pronounced by me in the Open Court on this the 18th day of October 2024.

Additional Subordinate Judge,
Tiruppur.

I. Petitioner and Respondent's side Evidences : NIL

II. Petitioner side Documents :

Ex.P1	26.08.1960	Partition Deed – Certified Copy
Ex.P2	21.05.1984	Sale deed in favour of Ramasamy
Ex.P3	24.01.2003	Death Certificate of Ramasamy - Copy
Ex.P4	24.01.2003	Legal Heirship Certificate - Copy
Ex.P5	10.11.2008	Partition deed entered between Gurusamy, Krishnamoorthy, Muthulakshmi, Nagamani.
Ex.P6	03.06.2013	Sale deed in the name of Venkadesh executed by the 1 st respondent
Ex.P7	12.08.2021	Sale deed in the name of Sivasamy executed by Venkadesh
Ex.P8	12.08.2021	Sale deed in the name of Sivasamy executed by Venkadesh
Ex.P9	27.02.2023	Encumbrance Certificate – Copy
Ex.P10	27.02.2023	Encumbrance Certificate – Copy
Ex.P11	01.03.2023	Encumbrance Certificate – Copy

Ex.P12	06.03.2023	Legal Notice – Office Copy
Ex.P13	25.05.2023	Sale deed inthe name of Pandidurai executed by the V.Sivasamy
Ex.P14	25.05.2023	Sale deed inthe name of Pandidurai executed by the V.Sivasamy
Ex.P15	-	The Chitta extract relating to the 1 st item of the suit property
Ex.P16	13.03.2023	Plan -Copy
Ex.P17	19.09.2023	Letter of Register Office sent to the plaintiff – Copy
Ex.P18	27.02.2016 11.07.2017	Plaint, PW.1 proof affidavit and deposition - Copy
Ex.P19	14.08.2012	Sale agreement
Ex.P20	27.12.2016	Legal Notice - Office Copy
Ex.P21	29.12.2016	Acknowledgement Card - Copy
Ex.P22	10.01.2017	Legal Notice - Office Copy
Ex.P23	13.09.2017	Decree in O.S.No.51/2017 - Copy
Ex.P24	13.09.2017	Judgment in O.S.No.51/2017 - Copy
Ex.P25	18.07.2018	Petition and order's E.P.No.257/2018
Ex.P26	11.01.2024	E-Court Daily Status in E.P.No.257/2018
Ex.P27	14.09.2023	Sale deed inthe name of Varatharajan executed by the Nagamani, W/o. Ramasamy.

III. Respondent's side Documents : Nil

Additional Subordinate Judge,
Tiruppur.

Fair order in
I.A.No. 2/2024
O.S. No. 50/2024
Date : 18.10.2024
ASJ Court, Tiruppur
