

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, TIRUPPUR.

PRESENT: **Thiru.Swarnam J.Natarajan, M.L.**
Principal District Judge, Tiruppur.

Monday, the 27th day of September, 2021

Thiruvalluvarandu 2052, Sri Pilava year, 11th day of Purattasi month

I.A. No. 35 / 2021 and

I.A.No.657/2021 in

O.S. No. 45 / 2021

(CNR No.TNTI18 - 002974 – 2020)

1. Park Trust,
A Public Charitable Trust,
Registered under the Indian Trusts Act,
Represented by it's Managing Trustee,
P.V.Ravi.

2. Dr.P.V.Ravi,
S/o.A.Vishwanathan,
Managing Trustee, Park Trust,

3. T.R. Karthik
S/o.P.V.Ravi
Trustee, Park Trust

...

Petitioners / Plaintiffs

Vs.

1. K.Manoharan
2. R.Anusha, D/o.P.V.Ravi,
CEO, Park Trust

...

Respondents / defendants

These petitions were coming on 23.09.2021 for final hearing before me in the presence of Thiru.Vignesh Venkat, Advocate for petitioners and of Thiru.N.V.Giri, advocate for 1st respondent, 2nd respondent remained exparte, and upon hearing both sides arguments and upon perusing the petitions, affidavits, counter statements and connected records and the

Dated 27.09.2021

Principal District Court, Tiruppur

petitions having stood over for consideration till this date, this Court deliver the following:

COMMON ORDER

**I.A. No.35/2021 in
O.S.No.45/2021**

This is the petition filed to grant temporary injunction under Order 39, Rule 1 and 2, restraining the 1st respondent, his men and agent from interfering with the petitioners' peaceful possession and enjoyment of the petition mentioned property till disposal of the suit and pass such further or other reliefs.

**I.A. No.657/2021 in
O.S.No.45/2021**

This is the petition filed under Order VI, Rule 17 of CPC and Order 1, Rule 10 of CPC, seeking permission to amend the plaint and to implead the parties.

2) As both the petitions are inter-related and relating to one and the same suit, both are taken up together for common disposal. Before going into the facts of the petition, it is necessary to outline briefly the facts of the case. The suit in O.S.No.45/2021 is filed by the plaintiff trust, the 1st plaintiff represented by its Managing Trustee and two other trustees of Park Trust against the defendants K.K.Manoharan and R.Anusha to declare the sale deed said to be executed by the 2nd plaintiff, 3rd plaintiff and the 2nd defendant dated 28.12.2017 in favour of the first defendant registered as document No.1235/2017 on the file of Palladam, Sub Registration Office as null and void and for permanent injunction not to encumber the property pending disposal of the suit. The suit was filed along with two injunction applications I.A.No. 34 /2021 and I.A.No.35/2021, I.A. No.34/2021 is for

injunction not to alienate property, which is one of the main prayer in the original suit. I.A.No.35/2021 is an interim injunction application under Order 39, Rule 1 and 2 not to disturb the peaceful possession, which has been taken up now for enquiry, though, there was no prayer in the suit for temporary injunction, which the petitioner now comes forward to amend the suit prayer.

3) The counsel for the petitioner had made his submissions at the initial stage, when the court sought for clarification from the counsels as to maintainability of such relief, which has not been prayed in the main suit. Therefore, he had come forward with the application in I.A. No.657/2021 seeking permission to amend the plaint on two folds, one, to implead the managing trustee and trustee of Park Trust, in their individual capacity also the sale has been effected by them in their individual capacity to avoid technical defects and the other relief is to amend the plaint by adding the prayer of interim injunction. Thereafter, the defendants / respondents filed petition under Order 7, Rule 11 of CPC to reject the plaint, which is numbered as I.A.No.674/2021, the same is pending now, for counter. The petitioner and the petitioner filed a memo requesting the court to take up the injunction application and the amendment application first and contends that if the same were disposed off, the rejection application would automatically go. He filed a memo to that effect and also cited some authorities in respect of his contention. With the consent of both the injunction and the amendment application were taken up together for common disposal.

4) In the meanwhile, during hearing I.A.No.524/2021 was filed to appoint commissioner to note down the physical features of the suit property, which this court finds it is necessary to decide the injunction application. Therefore, while enquiry was going on in the injunction

application, Advocate Mr.Prakash was appointed immediately to inspect the suit property in the presence of counsels to note down the physical features, except the fact regarding possession of the suit property and come up with report with photographs. He submitted his report with photographs and sketch and the same were marked as Exs.C1 to C3, Commissioner Report, Ex.C.1, Sketch, Ex.C2, Photographs, Ex.C3 series.

5) On the side of the petitioners Exs.P.1 to P.33 were marked during oral submissions and on the side of the respondents, Exs.R.1 to R.10 were marked.

6) In I.A.No. 657/2021, the petitioner seeks permission to amend the plaint by showing the trustees in their individual capacity in order to avoid technical defects. He had also contended that the school is running since 1995 and the passage through the suit property is the only way to take the school bus and the children and teachers for ingress and egress from the school to the main road and there was a cause of action, wherein the respondent based on the strength of the sale deed executed in their favour had made attempt to construct property in the plaint schedule causing disturbance to the peaceful enjoyment. Hence, the petition for amendment of the prayer as well as for amendment of the cause title.

7) The same was resisted by the respondents on the ground that the plaintiff is not sure about the case. The sale deed is in the favour of the respondent, no injunction can be granted against true owner, title deed shall follow possession and pursuant to the document, the defendant had mutated revenue records and enjoying the suit property with his peaceful possession. The proposed amendment by impleading the trustees in their individual capacity would alter the nature of the suit and the said amendment is barred by law and not maintainable. They want to insert a new cause of action,

which is not permissible under law and adding a prayer now after institution of petition is not sustainable.

8) For the injunction application, the petitioner contends that the school was established on the southern part of SF No.241/2 and the entrance for the school is in the northern side of SF No.241/2 and there is a private road connecting the school building and Karaipudur main road, which is the sole point for ingress and egress. The private road is used for swimming pool, cow shed, staff quarters, sump and other electrical main circuits and the land to the west of the suit property road in SF No.241/2 is used as a playground for children and generator room. The 1st respondent is a financier, who approach the petitioners and transferred sum of Rs.1,15,83,000/-, Rs.2,00,00,000/-, Rs.31,66,000/- Rs.50,00,000/-, Rs.30,00,000/-, Rs.8,00,000/- and Rs.6,25,000/- Rs.7,50,000/- on various dates, mentioned in paragraph 13 of the petition in I.A.No.35/2021 and thereafter, obtained the sale deed on 28.12.2017, which would show that it is only a loan transactions and the document was executed as a security. The market value of the property is more than Rs.13,00,00,000/- and the property has been sold for very lesser amount. The possession of the property continues with the petitioners and the school is functioning on the said land, the balance of convenience is in favour of the petitioners, hence the petitioners seeks for injunction.

9) The same was resisted by the respondents by filing counter stating that the property has been purchased by the petitioner in their individual capacity and not as trustee for value consideration of Rs.3,51,00,000/- from the legal heirs of Prema Ravi on their individual capacity, the property have been purchased through sale deed dated 28.12.2017 and the property has been delivered on the date of sale deed and

from their onwards, the respondent is in exclusive possession and enjoyment of the suit property by mutating revenue records. The respondent is a bonafide purchaser for valuable sale consideration and he is not a financier as alleged because of the raised the value now, the petitioners make attempt to file the suit and injunction application with false allegations by suppressing the recitals in the sale deed and filed the petition.

10) **The point for determination are as follows:-**

1) Whether the amended petition is to be allowed in spite of the objection raised by the respondent that it will amount to change of cause of action of the suit and the amendment is barred by limitation?

2) Whether the petitioners are entitled for injunction as prayed for?

11) The documents and oral submissions made by the petitioners and respondents were considered. The Advocate Commissioner filed his detailed report with photographs to show that the entrance for the suit property as well as to the school is through X1 private road which leads to A1, D1 ground and then to the school. Through the said private road, which is a broad road, the school bus comes and goes and the alternative way B4 and B5 shown in the Commissioner Report are admittedly not sufficient to pass through the school bus and it is not convenient for the peaceful enjoyment of the suit property. The issue pertaining to the validity of the sale deed, the recitals in the sale deed, under what capacity the sale deed was executed, whether it was acted upon are to be decided in the main suit. That cannot be determined now as the same would amount to foreclosing the right of the parties in the main suit. However, from the commissioner report as well as from the petitioners' documents, it reveals that the school is functioning for more than 20 years in the suit property and they are using the X1 for ingress and egress for their effective functioning of the school.

Through which, the school students are coming and school bus is coming and going, taking the school children and teachers. If the same is closed, the same would definitely cause prejudice for the functioning of the school as well as for the peaceful enjoyment of the petitioners with respect to their school. Therefore, this court finds prima facie material to grant an injunction in favour of the petitioners by taking into consideration, the school children education.

12) The objections raised by the respondent with respect to amendment sought for now in the suit by impleading the trust in their individual capacity as well as with respect to the limitation. This court finds that the school was not functioning for two years. Therefore, they were not for pressing the injunction and now the school started functioning, now they have necessity to seek for interim injunction. The objection with respect to limitation is not legally sustainable and with respect to the impleading of trustee in their individual name, this court finds that it will not change the character of the suit or cause prejudice to the respondent.

13) With respect to limitation plea also this court finds that the same is not sustainable during this pandemic period as the Hon'ble Supreme Court has categorically held that the plea of limitation cannot be raised during lock down period.

14) It is settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. As held in case between Puran singh Vs. state of Punjab reported in 1975 (4) SCC 518, "settled possession" must be (a) effective, (b) undisturbed and (c) to the knowledge of the owner or without any attempt and concealment by the trespasser. In Rame Gowda V/s Varadappa Naidu, 2004(1) SCC 769, the Hon'ble Apex court has laid down

following test 14/29 which may be adopted for determining the attributes of settled possession as under :- a) that the trespasser must be in actual physical possession of the property over a sufficiently long period; b) that the period must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would however, be a matter to be decided on the facts and circumstances of each case; c) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner and ; d) That one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession.

15) Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hira Lal, AIR 1962 SC 527, it is held that, Civil Court has a power to grant interim injunction in exercise of its inherent jurisdiction even if the case does not fall within the ambit of provisions of Order 39 Code of Civil Procedure.

16) Order 39 Rule 1 is not the sole repository of the power of court to grant injunction but sec 151 confers power upon in court to grant injunction if the matter is not covered by Rule 182. But the court shall exercise inherent jurisdiction only when they considered it absolutely necessary for the ends of justice and exercise said discretion with extreme caution and only in very rare cases (Tanushree Basu Vs. Ishanya Bagal, 2008 All S C R. 1186)

17) Where an objection to jurisdiction of civil court to entertain a suit and to pass interim orders therein is raised, the court should decide the

question of jurisdiction in the first instance but that does not mean that pending the decision on the question of jurisdiction the court has no right to pass interim order as may be called for.(Tayyabhai Bagusarwala Vs. Hind Rubber Industries, 1997 SC 1240).

18) In Jagdish Singh V. Natthu Singh, AIR 1992 SC 1604, the Hon'ble Supreme Court has held that the Court may to a certain extent allow the conversion of the nature of the Suit, provided it does not give rise to an entire new cause of action. An amendment sought in a plaint filed for specific performance may be allowed to be done without abandoning the said relief but amendment seeking damages for breach of contract may be permitted. If the plaintiff wants to add certain facts, which the plaintiff had not chosen to mention in the original plaint and the same were in his knowledge when the plaint was instituted it can be done. However, the plaintiff cannot be allowed to make fresh allegation of facts by way of amendment at a belated stage. (Vide: Gopal Krishnamurthi V. Shreedhara Rao, AIR 1950 Mad. 32; and Gauri Shankar V. M/s Hindustan Trust (Pvt) Ltd., AIR 1972 SC 2091).

19) In the case of State of MP v. Union of India, (2011) 12 SCC 268, amendment sought after a delay of 5 years and issues are already framed. Relief sought by virtue of 71 amendment was not relief that could be granted in the suit concerned. It was held that though courts have ample power to allow amendment of plaint but the said power should be exercised in the interest of justice and for determination of the real question in controversy between the parties. Either party can amend its pleadings in such a manner and on such terms as may be just. However, amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hyper technical

approach- A liberal approach should be the general rule approach- A liberal approach should be the general rule, particularly in cases where the other side can be compensated with costs. Amendments are sought to avoid multiplicity of proceedings and where sought after trial commences, it must be shown that in spite of due diligence, such amendment could not have been sought before. (See also: Revajeelu Builders and Developers V. Narayanaswamy and Sons, (2009) 10 SCC 84.

20) Similarly, in the case of Peethani Suryanarayana v. Repaka Venkata Ramana Kishore, (2009) 11 SCC 308 it was held that the Courts hold the power to allow such amendment provided: (a) Application is bonafide (b) Does not cause injustice to the other side (c) Does not affect the right(s) already accrued to the other side.

21) In the present case, the suit has been filed in time, now they want to seek the relief of temporary injunction and want to show the trustees in their individual capacity also. This will not affect the limitation. Therefore, this court finds that the objections raised by the respondents is not legally sustainable. By considering the documents filed on the side of the petitioners, this court finds that school is functioning and the X1 pathway / suit property, the school bus has to pass through, students, teachers shall go. The other two ways shown in the Advocate Commissioner report are not alternative / efficacious way as that of X1 to reach the school. Moreover, the gate is under the control of the school security control, the staff -quarters, electricity board are situated in the suit property through which the petitioners are enjoying the school. Hence, for continuous running of the school, the injunction order is required. Otherwise the school interest would be prejudiced.

22) Considering the above circumstances, this court is inclined to allow both the applications, in I.A.No.657/2021 amendment petition is allowed, no costs. I.A.No.35/2021 is allowed, temporary injunction is granted, restraining the respondents from interfering with the functioning of the school activities as well as for the ingress and egress of the school bus, teachers and students passing through X.1 gate, which is situated in the suit property for their school functioning. Similarly, the respondents shall not interfere in the electricity board, staffs quarters and other amenities available in the suit property for the convenient peaceful enjoyment of the school. The injunction is granted for the convenience enjoyment of the school and the title of the property is not decided leaving the parties to agitate their right in the main suit, wherein, the suit has been posted for trial.

23) The parties shall co-operate and get on with the trial and shall cooperate for early disposal of the suit within a period of 3 months. Till such time, temporary injunction is granted, restraining the respondents from interfering with ingress and egress as well as the peaceful enjoyment of the petitioner passing through the private road X.1 as well as amenities available in the suit property for the peaceful enjoyment of the school and hence, the points are answered in favour of the petitioners holding that the petitions are to be allowed.

In the result, both the I.A.No.35/2021 and I.A.No.657/2021 are allowed and temporary injunction is granted to the petitioners restraining the respondents from interfering with ingress and egress as well as the peaceful enjoyment of the petitioner passing through the private road X.1 as well as amenities available in the suit property for the peaceful enjoyment of the

school till disposal of the suit and the petitioners are permitted to amend the plaint as prayed for. No costs.

Dictated to the steno typist, typed by her with the help of voice recorder, corrected and pronounced by me in open court, this the 27th day of September, 2021.

Principal District Judge,
Tiruppur.

LIST OF DOCUMENTS ON THE SIDE OF PETITIONERS:

Ex.P.1	31.12.2017	ICICI bank Summary of account of 1 st plaintiff trust for the period from 01.12.2017 to 31.12.2017	Original
Ex.P.2	15.12.2017	Notification u/s.13(2) of SARFAESI Act by the Religare Finvest Limited to the 1 st plaintiff	Original
Ex.P.3 Series	-	Electricity receipts for Managing Trust Park School for the period from 14.08.2019 to 20.10.2020(5 counts)	Original
Ex.P.4	31.12.2019 & 31.10.2020	Water tax bill invoices in the name of Park school for the month of December 2019 and October 2010.	On line copy
Ex.P.5	24.10.2020	Renewal of recognition of the Part Matriculation School issued by Chief Education Officer, Tiruppur.	Original
Ex.P.6	03.08.2021	Orders issued by the Principal Secretary to Government to the Part Trust School, Karaipudur in Na.Ka. No.1216/E1/2021 to Park School with regard to RTE admission instructions.	Copy

Ex.P.7	03.08.2021	Letter (Ms) No.120, dated 03.08.2021 passed by the School Education Department Secretariat, Chennai-9 to Park School with regard to RTE admission circular.	Copy
Ex.P.8	16.08.2021	Proceedings in Na.Ka.No.1675/21 passed by the District Educational Officer, Palladam to Park School with regard to inspection team on 25% reservation for RTE.	Copy
Ex.P.9	03.09.2021	Certificate under Section 65(b) of Indian Evidence Act	Copy
Ex.P.10	-	House tax receipts for the period from 30.03.2016 to 22.03.2021(6 counts)	Original
Ex.P.11	-	E.B. Bill receipts for the period from 15.04.2015 to 17.08.2021(17 counts)	Original
Ex.P.12	-	Water Tax receipts for the period from 30.11.2019 to 31.08.2021	Original
Ex.P.13	-	Admission register for class LKG and UKG from 2017 till 2021	Copy
Ex.P.14	-	Admission register for class 1 st Std to 10 th Std from 2017 till 2021	Copy
Ex.P.15	-	Admission register for class 11 th Std and 12 th Std from 2017 till 2021	Copy
Ex.P.16	30.08.2021	CD containing audio, video and photographs of the incident place	-
Ex.P.17	31.08.2021	Certificate under Section 65(b) of Indian Evidence Act	Copy
Ex.P.18	30.08.2021	Complaint given by the petitioners to the Police Station, Palladam.	Copy

Ex.P.19	30.08.2021	CSR receipts issued by the Police to the petitioners	Copy
Ex.P.20	-	Discharge summary of Varadharaj without the signature of doctor.	Original
Ex.P.21	-	Screen shot of the complaint made to the police help line "100"	Copy
Ex.P.22	21.12.2020	Certificate under Section 65(b) of Indian Evidence Act	Copy
Ex.P.23	-	Satellite images for the school (22 counts)	
Ex.P.24	30.01.2002	Letter given by the Park School (Residential) for renewal of higher secondary courses to the Director of School Education, Madras-6.	Copy
Ex.P.25	-	Photographs of the Park School (5 counts)	-
Ex.P.26	17.02.2016	Simple mortgage deed by M/s.Park Trust to S.Martin	Certified copy
Ex.P.27	-	Site plan showing the Topographical boundary survey in SF No.237/4A2, 4B, 4C1 and 241/2A, 2B,and 2C of Karipudur village, Palladam of Park College and School.	Original
Ex.P.28	-	C.D.-1	
Ex.P.29	03.09.2021	Account statement of Anusha in Karnataka Bank Limited, Coimbatore, Ramanathapuram from 25.12.2017 to 31.12.2017.	Original
Ex.P.30	03.09.2021	Account statement in the name of M/s. Park Trust in Canara Bank, Kaniyur branch.	Original

Ex.P.31	08.09.2021	Certificate under Section 65(b) of Indian Evidence Act and FMB sketch of Survey Nos.241, 421/2C, 238 of Karaipudur village, Palladam Taluk.	Copy
Ex.P.32	-	Compound FMB sketch in Karaipudur village, Palladam Taluk, Tiruppur District.	Copy
Ex.P.33	-	Detailed plan showing existing G+2 RCC Roof Educational Institution Building in SF No.237/4A part, 237/4C part, 241/2B part in Karaipudur village, Palladam Taluk, Tiruppur District.	Original

LIST OF DOCUMENTS ON THE SIDE OF RESPONDENTS :

Ex.R.1	28.12.2017	Sale deed executed by the 1 st defendant in favour of the plaintiffs 1 to 3	Certified copy
Ex.R.2	17.08.2021	Original Adangal extract in the name of the 1 st respondent	True copy
Ex.R.3	03.05.2018	Kist receipt in the name of Manoharan	Original
Ex.R.4	08.03.2021	Kist receipt in the name of Manoharan	Original
Ex.R.5	23.07.2021	Building plan approval in SF No.241/2C, Karaipudur Village in the name of 1 st respondent.	Original
Ex.R.6	05.02.2021	E.B. Bill receipt in the name of 1 st respondent.	Original
Ex.R.7	02.09.2021	Statement of account for the period from 01.12.2017 to 01.12.2017 of M/s. Warrior Clothing Company issued by Union Bank of India, Tiruppur (SSI) branch.	Original

Ex.R.8	31.08.2021	CSR copy issued by the Sub Inspector of Police, Palladam Police Station	Original
Ex.R.9	-	Photo-1	-
Ex.R.10	13.05.1991	Sale deed executed by Prema Ravi in favour of P.V.Ravi.	Certified copy

**LIST OF WITNESSES ON
BOTH THE SIDES:** .Nil

P.D.J., Tiruppur.

Draft / Fair Order
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O.S.No.45/2021
Dt: 27.09.2021
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