

IN THE COURT OF SUBORDINATE JUDGE OF PALLADAM

**PRESENT: Thiru.K. Yuvaraj, B.A.,B.L.,
Subordinate Judge, Palladam**

Monday of 30th June, 2025

IA No.2/2025

in

OS No54/2025

N.Chinnasamy Gounder

... Petitioner / Plaintiff

/Vs/

- 1. Eswaramoorthy Gounder**
- 2. Devaraj**
- 3. Rathinasamy**
- 4. Dinesh Kumar**
- 5. The Assistant Electricity Engineer,
TANGEDCO**

... Respondents / Defendants

These petitions are coming on 24.06.2025 for final hearing before me in the presence of Thiru. A.R.Hariprasaadh,M.A.,B.L., Advocate for the Petitioner and Thiru. K.Gopalakrishnan,B.A.,B.L. Advocate for the 1st Respondent and 2nd Respondents and Thiru.P.Sakthivel,B.Sc,B.L., Advocate for the 3rd Respondent and 4th Respondent. Upon hearing both side arguments and on perusal of all connected material records and having stood over till this day for consideration, this court delivered the following..

IA No.03/2025
in
OS No54/2025

1. Rathinasmay
2. DineshKumar

... Petitioners/ Respondents/ Defendants No. 3&4

/ Vs/

1. ChinnaSamy gounder

... Respondent / Petitioner/ Plaintiff

2. Eswaranoorthy Gounder
3. Devaraj
4. The Assistant Electricity Engineer, Tangedco Kallipalayam Village

... Respondents 2to 4 /
Respondents 1,2 & 5
Defendants 1,2 &5

These petitions are coming on 24.06.2025 for final hearing before me in the presence of Thiru. Thiru.P.Sakthivel,B.Sc,M.L.Advocate for the Petitioners and Thiru. A.R.Hariprasaadh,M.A.,B.L., Advocate for the 1st Respondent and K.Gopalakrishnan,B.A.,B.L. Advocate for the 2nd Respondent and 3rd Respondent. Upon hearing both side arguments and on perusal of all connected material records and having stood over till this day for consideration, this court delivered the following..

COMMON ORDER

Since above applications are Cross applications for the sake of brevity the parties are called as per their original rank in the main suit.

2. In IA No.02/2025 the application was filed by the plaintiff for

granting an interim injunction by restraining the 3rd and 4th Defendants not to interfere his peaceful possession and enjoyment over the suit property. In IA No.03/2025 the application was filed by the 3rd and 4th defendants 3 to vacate the Ad- interim injunction granted by this court on 28.04.2025 by way of an emergent application filed with main Suit.

3. The learned counsel for the plaintiff argued that the suit property in Survey No.260/1 was allotted to the plaintiff by way of an registered Partition Deed Dated 04.04.1976 and the 3rd defendant is owner of the adjusted Suit property in S.F.No.260/2 which is situated in East of the Suit Survey No.260/1, there are Two Wells were situated in the Suit Survey No. 260/1, in that middle of the suit property in S.F.No.260/1 there is a common Well which was utilized by the Plaintiff and his younger Brother, who is the 1st defendant and Son who is the 2nd defendant herein.

4. During 2014 the plaintiff had constructed an another Well in the Northern Portion of the suit property in Survey No.260/1 for this exclusive Occupation. While so in order to get a individual Service connection for his newly constructed Well the plaintiff had approached 5th Defendant for a Electricity Connection out of jealous the 1st Defendant had lodged a objection with 5th Defendant for granting of Service connection in the name of Plaintiff.

5. Further the 1st defendant had filed a Writ Petition in W.P.No.33427/2022 before Hon'ble High Court of Madras, thereafter the defendant 1 to 3 have joint together and disturbed the peaceful possession of the Plaintiff over the newly constructed well which was exclusive constructed by the plaintiff for his own occupation in his own property in Suit Survey No.260/1. Since there are Writ Petition and Civil Suits are pending the District Collector had rejected his application for granting of

Service Connection. Thereafter this plaintiff had filed a Writ petition in W.P.No.30858/2023 to consider his representation for granting of Service connection, in that our Hon'ble High court on 30.08.2024 had disposed both the Writ Petitions by directing the 5th Defendant to conduct an enquiry and grant electricity service connection, despite such direction the 5th Defendant refused on the ground that Civil suit was pending in OS No.36/2023 which was filed by the plaintiff as against the defendants for the relief of Permanent Injunction by restraining them defendant not to disturb his peaceful possession and enjoyment over the suit Well before the Learned District Munsif, Palladam.

6. In that suit the 3rd Defendant had raised a cloud over the title of the Subject Well the plaintiff had withdrawn the original suit in OS No. 36/2023 and filed this suit for the declaration of Title over the Subject Well and to challenge the Settlement Deed which was said to be executed by the 3rd Defendant in favour of the 4th Defendant in Doc No.8279/2023 as Null and Void with respect to the suit well.

7. Further the Learned counsel for the plaintiff argued that based upon the available Materials which was filed in Support of his claim along with Adangal, FMB Sketch, Patta this court had passed an Ad- Interim injunction in his favour on 28.04.2025 while hearing the said application along with a Emergent application. Hence the learned counsel for the plaintiff argued for interim Injunction till the disposal of the suit.

8. Per contra, the learned counsel for the 3rd and 4th Defendants filed Injunction Vacate application in IA No.3/2025 and argued to take his affidavit filed in IA No.03/2025 as a counter in IA No. 02/2025 and argued vehemently that the learned counsel for the plaintiff purposefully suppressed the material fact that in OS No. 36/2023 before Learned District

Munsif, Palladam this 3rd Defendant and 4th Defendant had filed an IA in IA No. 5/2023 for Appointment of Advocate Commissioner under Order XXVI Rule 9 and the said application was allowed by the Learned District Munsif, Palladam on 14.08.2023 and appointed an Advocate Commissioner to visit the suit property and to file a detail report thereon.

9. Based upon the said Warrant the learned Advocate Commissioner had filed her report on 22.10.2024, on careful reading of the Advocate Commissioner report there is no such Well was situated in S.F.No.260/1 which is the suit survey number herein, but the Well was situated within the boundaries of Survey No.260/2 belongs to 3rd and 4th Defendants. Hence the Plaintiff has no well as averted by him in his Affidavit or Complaint. Further the learned counsel for the 3rd and 4th Defendants vehemently argued that already there are criminal cases were pending between the parties concern. Hence according to the learned counsel for the 3rd and 4th Defendant since there was a material suppression with respect to the Advocate commissioner report in this case, plaintiff is not entitled for any relief from this court.

II. Now point for consideration is Whether the Ad- interim Order Granted by this court in IA No. 2/2025 is allowed or IA No. 03/2025 to vacate the injunction Under Order XXXIX Rule 4 to be allowed?

1. Heard Both side. Perused entire records. On careful perusal of entire records it is the case of the plaintiff that he filed the suit for the relief of Title over the subject Well and to declare the Settlement Deed in Doc. No. 8279/2023 dated 03.05.2023 in favour of the 4th Defendant by the 3rd Defendant as Null and Void.

2. On careful perusal of entire records it is the case of the plaintiff that

the plaintiff was allotted with the suit property in S.F.No. 260/1 by way of an Register Partition Deed Dated 04.04.1976 and from the date of Registered Partition Deed the plaintiff was enjoying the Suit property along with the common Well which was situated in middle portion of S.F.No.260/1. On careful perusal of records the plaintiff had marked the Certified copy of the Registered Partition Deed Dated 04.04.1976 as Document Ex.P1. Further it is not a dispute that the plaintiff was allotted with S.F.No.260/1 by way of a Registered Partition Deed Dated 04.04.1976 under Ex.P1. It is the specific case of the plaintiff that the said common Well was situated in the middle of the suit property in S.F.No.260/1. Further the plaintiff and the 1st defendant had obtained a service connection No. 234/007/030 and 5 HP Motor for the common usage of plaintiff and the 1st and 2nd Defendant.

3. Thereafter the plaintiff had constructed an independent Well in the Northern portion of the suit property in Survey No.260/1 for his exclusive occupation and he applied for Service Connection for Utilizing by his own, thereafter the issue between the plaintiff and 1st defendant and 2nd Defendant had aroused and the 1st defendant had filed a Writ application before Hon'ble High court of Madras in W.P. No. 33427/2022 by objecting the 5th Defendant to issue Service Connection to the plaintiff, thereafter the plaintiff had filed a Suit before the learned District Munsif, Palladam in OS No. 36/2023 for the relief of Permanent Injunction as against this defendants not to disturb his peaceful possession and enjoyment over the suit Well.

4. Thereafter the 3rd and 4th defendant had filed their Written statement by objecting that the suit Subject Well was situated in S.F.No.260/2 which belong to the 3rd and 4th Defendant and they also filed a Counter Claim for the relief of Permanent Injunction restraining the plaintiff not to disturb

them. Moreover 3rd and 4th Defendants had filed an application for appointment of Advocate Commissioner under Order XXVI Rule 9 of CPC in IA No. 05/2023 and Learned District Munsif, Palladam had appointed an Advocate Commissioner on 14.08.2023 to visit the suit property and to file a detail report. Thereafter the learned Advocate Commissioner had filed her report on 22.10.2024 stating that suit Well was situated in S.F.No.260/2.

5. On Careful perusal of records the order of the Learned District Munsif, Palladam in IA No.05/2023 was produced and marked as Ex.R5 on the side of defendants and the Report of the Learned Advocate Commissioner in IA No. 5/2023 in OS No. 36/2023 was Marked as Ex.R6. The Learned counsel for the plaintiff firmly argued that after the receipt of Counter Claim since there was a cloud over the Title with respect to the Subject suit Well he withdrawn the suit on the file of District Munsif, Palladam and he file this present suit for the declaration of Title for the suit Well and by declaring the Settlement Deed which was said to be executed by the 3rd defendant to in favour of the 4th Defendant in Document No. 8279/2023 as Null and Void.

6. Further the learned counsel for the plaintiff argued that the Advocate Commissioner report will not taken into account since it has no evidentiary Value at this point of time, since according to him the Advocate Commissioner report should not be looked into unless it was proved by the parties by examining the said Advocate Commissioner.

7. According to the Learned counsel for the plaintiff except the Advocate Commissioner Report the defendants has no individual revenue records to show that the subject Well was situated in S.F.No.260/2, but on other hand the plaintiff had produced Patta's under Ex.P16 and Ex.P24

along with the FMB Sketch under Ex.B23 and Ex.B25 to show that the suit property in Survey No. 260/1 was under the exclusive possession and enjoyment of the plaintiff. Further as per Ex.B11 Adangal it is clear that in the suit survey No.260/1 there are Two Wells were present in the suit Survey No.260/1.

8. Further the Learned Counsel for the plaintiff argued that it is not the case of the defendant that there are other two well were present except the disputed Well. Further on careful perusal of entire records it is admitted on the side of the defendants that there was a common well in Suit Survey No. 260/1 which was in the middle of the suit property. Further on careful perusal of Ex. P11 Adangal it clearly shows that there are two Wells were present in suit Survey No. 260/1. Except the report of the learned Advocate Commissioner no other revenue records were produced on the side of the defendants to show that the Subject well was situated within their Survey No.260/2 which exclusively belongs to the 3rd and 4th defendants. Hence it clearly shows that the plaintiff has a valid possessory right over the subject well which is situated in S.F.No. 260/1 as per Ex.P11 Adangal and Ex.P16, Ex.P24 Patta's and Ex.P23, Ex.P25 FMB Sketch which was produced by the plaintiff.

9. Further on careful perusal of records even it is the case of the defendants that there are cases pending before the police for the civil dispute between the parties concerned. Hence it categorically shows that there was a prima facie case made out on the side of Plaintiff and there was an balance of convenience in his favour and there will be a irreparable loss if there is a no injunction by this court till the disposal of the case. Hence this court is of the considered view to grant Interim Injunction in favour of the plaintiff in IA No. 02/2025 till the disposal of the main suit and by dismissing the vacate injunction application in IA No.03/2025.

With this observation both the applications were ordered. However there will be no costs.

Dictated to the stenographer, transcribed and typed out by her, corrected and pronounced by me in open court this 30th June 2025.

Subordinate Judge,
Palladam.

Fair / Final Order

IA. 2/2025 and IA No.03/2025 in
OS 54/2025

Date: 30.06.2025