

IN THE COURT OF THE III ADDITIONAL DISTRICT MUNSIF  
TIRUNELVELI

Present : Thiru. R.T.S. Kannan, B.A., B.L.,  
District Judge (Trainee),  
As III Additional District Munsif,  
Tirunelveli.

DATED THIS THE 13<sup>th</sup> DAY OF FEBRUARY 2025 THURSDAY

I.A.No.3/2024 in O.S.No.223/2023

E. Murugan ... Petitioner/ Plaintiff

// versus //

B. Murugeshwari ... Respondent/ Defendant

This petition is coming before me on 13.02.2025 for final hearing in the presence of Learned Advocate Mr. I. Vijayan for the Petitioner/Plaintiff and Learned Advocate Mr. M.S. Vijay Anand for the Respondent, after perusing the petition, affidavit and plaint documents upon hearing both side arguments, this court made the following,

**ORDER**

The petitioner/plaintiff filed the above petition filed under Order 39 Rule 1 and 2 CPC r/w 151 of CPC for seeking an interim relief of Temporary injunction restraining the respondent/ defendant, her servants, agents or any persons claiming under her, from interfering with the peaceful possession and enjoyment of the suit schedule property by the petitioner/plaintiff

**2. Concise statement of the petition**

2.1) The petitioner has filed his affidavit in support of the above petition wherein he claims that the suit schedule property is belonging to him. His wife and himself are living without any children. Further he pleads that his wife and himself are eking their livelihood from the agriculture field in the suit schedule property. On

15.05.2006 to meet urgent family needs he mortgaged the suit schedule property with one Balamurugan under a registered mortgage deed bearing No.2105/2006 and received a cash of Rs.25,000/-.

2.2) After he has paid back the said loan amount with interest part by part he approached the said Balamurugan to execute a receipt deed (to redeem the mortgage) for which the said Balamurugan promised to execute the said deed within two months. Unfortunately the said Balamurugan none other than the husband of the defendant, died.

2.3) Subsequent the demise of the Balamurugan he approaches the defendant to execute the receipt deed for which she claimed exorbitant amount of Rs.1,00,000/- and the defendant is doing Kanthu Vatti business and she is threatening with intention to grab the suit schedule property from the petitioner.

2.4) The defendant, her sons and her persons are used to coming into the suit schedule property would break the lock and steal the yields kept in the suit schedule property. If he questions them they would cause hurt to him and they would push him down. In such manner the defendant is interfering with the peaceful possession of the suit schedule property being enjoyed by the plaintiff.

2.5) The petitioner is an illiterate and he does not know nuances about the legality of the mortgage. Taking advantage of his situation the defendant and her sons entered into the suit schedule property and stolen the electric motor and cut the trees from the suit schedule property and sold the same in Tirunelveli. The defendant is very influential person and has money power also. Hence balance of convenience is in his favour and injunction is not granted, he would be put to great loss. If such injunction is not granted, for food and shelter they would be having no means but to end their life.

2.6) With regard to this atrocities the petitioner approached Sivanthipatti

Police station and gave a complaint and obtained CSR. Hence the petitioner filed the above suit for Mandatory injunction directing the defendant to execute a receipt deed for redeeming the suit schedule property mortgaged under document No.2105 of 2006 with late husband of the defendant and also for the relief of permanent injunction restraining the respondent/ defendant, her servants, agents or any persons claiming under her, from interfering with the peaceful possession and enjoyment of the suit schedule property by the petitioner/plaintiff and for cost.

### **3. Concise statement of the counter filed by the respondent**

3.1) The respondent in her counter from Para No. 1 to 7 (Pages 1 to 4) denies all the allegations and averments made in the petition.

3.2) The respondent pleads that the petitioner has received Rs.30,000/- from her husband. The petitioner is the paternal uncle of the respondent. In fact the husband of the respondent took the schedule property for lease (Otti) for a sum of Rs.30,000/-. Since, her husband could not continue with the lease he handed over the possession of the suit schedule property to the petitioner and sought refund of the lease amount of Rs.30,000/-. As the petitioner could not return back the said amount he promised to return the said amount with interest at the rate of 2 paise per rupee.

3.3) However the petitioner has not paid any amount towards the principal and the interest. Often there was quarrel between the petitioner and the husband of the respondent. On 01.07.2007 there was a quarrel between the petitioner and the husband of the respondent during night hours. Subsequent to that the husband of the respondent came home directed her to get back the money from the petitioner. As the husband of the respondent was in a stress due to such quarrel on 02.07.2007 he consumed poison and died. For this incident an FIR No.125/2007 was registered by the Seithunganallur Police Station. All these facts are suppressed by the petitioner and filed the above suit with malafide intention.

3.4) However the respondent pleads that neither her nor her persons indulged or interfered against law as alleged in the petition. The balance of convenience not in favour of the petitioner. Petitioner has no prima facie case.

4) **Points for consideration**

**Whether the petitioner is entitled to the relief of temporary injunction as prayed for?**

5) **Submissions, Discussion and Decision**

5.1) The Learned counsel for the petitioner/plaintiff would emphatically submit the averments made in the above petition and insistent for the relief of temporary injunction till the disposal of the above suit. On the other hand the counsel for respondent would submit that the respondent never indulged in any such illegal activities against the petitioner and his properties as alleged in the petition.

5.2) Having made such submission the counsel for the respondent also obtained an undertaking affidavit dated 13.02.2025 from the respondent herself and filed the same before this court today. In the said affidavit the respondent has expressly undertaken that she would not create any encumbrances nor cause any interference to the petitioner and his property.

5.3) Upon going through the averments in petition as well as the counter and the affidavit of undertaking dt. 13.02.2025 it is not disputed that possession of the suit property is with the petitioner, which is categorically admitted by the respondent in her counter at Page No.5, Para No.3 in the following lines “ மேலும் மனுதாரர்/வாதி

பிராதில் குறிப்பிட்டுள்ள சொத்தினை மனுதாரர்/வாதியிடமிருந்து எதிர்மனுதாரர்/பிரதிவாதியின் கணவர் திரு.பாலமுருகன் ரூ.30,000/- (ரூபாய் முப்பதாயிரம் மட்டும்) ற்கு குத்தகைக்கு எடுத்துள்ளார். அதன் பின்பு தோட்டத்தை

எதிர்மனுதாரர்/பிரதிவாதியின் கணவரால் பார்க்க முடியாததால் சொத்தினை மீண்டும் மனுதாரர் வாதியையே பராமரித்து கொள்ள சொல்லி இருவரும் பேசி மேற்படி ரூ.30,000/- (ரூபாய் முப்பதாயிரம் மட்டும்) ற்கு 2 பைசா வட்டி தருவதாக ஒப்புக்கொண்டுள்ளார்.” this fact is also buttressed from the undertaken given by the respondent.

5.4) The nature of the case is that the petitioner is having a prima facie case, balance of convenience is in his favour, he would put to hardship and loss in case injunction is not granted. Besides all these aspects the respondent also has given the undertaking that she would not interfere with the possession of the suit property. Though there is a dispute regarding the quantum of mortgage money and the due amount payable by the petitioner to the respondent the petitioner has prima facie case for seeking this relief of temporary injunction as the dispute regarding mortgage money can be analysed and arrived during the trial of the above suit. Hence the petitioner is entitled to the relief of temporary injunction as prayed for.

***In the result this petition is allowed and the respondent/defendant, her persons, agents, servants or any persons claiming under her are restrained by this order of Temporary Injunction from interfering into the peaceful possession and enjoyment of the petition schedule property being enjoyed by the peitioner/ plaintiff till the disposal of the above suit. No cost.***

Dictated to the Steno - Typist, directly typed by her into the computer, then corrected and pronounced by me in open Court, on this the 13<sup>th</sup> day of February 2025.

Sd/- R.T.S. Kannan,  
District Judge (Trainee),  
III Additional District Munsif,  
Tirunelveli.

**Petitioner side Witness & Documents : NIL**  
**Respondents side Witness & Documents : NIL**

Sd/- R.T.S. Kannan,  
District Judge (Trainee),  
III Additional District Munsif,  
Tirunelveli.