

IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF AT VALLIYOOR

PRESENT: THIRU J. ANNS RAJA B.A., B.L.,
PRINCIPAL DISTRICT MUNSIF (FAC),
VALLIYOOR.

Tuesday, the 02nd day of July 2024

திருவள்ளூர் ஆண்டு 2055, குரோதி வருடம் ஆனி மாதம் 18 ம் நாள் செவ்வாய்க்கிழமை

I.A.No.09/2024 in O.S.No.32/2013

R.Velsamy

....Petitioner/Plaintiff

/Vs/

1) P. Iyyappan

2) Kala

3) R.S.Vasantharajan

4) Shanmugasundaram

... Respondents/Defendants

This petition coming up before me for final hearing on 18.06.2024 in the presence of Thiru.T.A.Davidson learned counsel for the petitioner, Thiru. V.Joseph Raja Jegan learned counsel for the 1,2 respondents, Thiru. D.Uclid Einstin learned counsel for the 4th respondent and 3rd respondent set exparte and this Court upon perusal and consideration of oral arguments and the case records and having stood over-under consideration till this date, this Court delivered the following

ORDER

This petition has been filed by the petitioner under Order 39 Rule 1, 2 and Sec. 151 C.P.C., for Temporary Injunction restraining the respondents 1, 2 / defendants 1, 2, their men or agents from making any construction in the 2nd schedule property till the disposal of the suit and pass an order of ad-interim injunction to the same effect till the disposal of the petition.

1) Brief averments of the Petition :

The plaint schedule property originally belonged to Y.Syed Abdul Kareem Sahib son of R.A.Syed Yacob Sahib and it was purchased by Ramasamy Nadar son of Narayana Nadar by virtue of sale deed dated 22.06.1972. It was a punja land having no well and no crop could be raised. So the said Ramasamy Nadar dug well and got electric service and fitted with electric motor pumpset. He used to cultivate nanja crops like plantain, paddy and other cash crops.

After the demise of said Ramasamy Nadar his sons Mayileruperumal, Thangapandi, Sudalaimuthu enjoyed it and by orally partitioned also. Later, the said Thangapandi mortgaged his property to one Thangavel on 28.02.1997, because the said Thangavel was having property in survey No.1059 and well for irrigation and he enjoyed it even though it was only a simple mortgage. Then the other two brothers namely Mayilerumperumal and Sudalaimuthu also got loan of Rs.1.1/2 lakh from one Elson son of Thangapandi Nadar and of another person on 09.10.2001 through promissory note and gave an Yadast on the same date to enjoy their portions for further digging of the well etc. So all the above said three gave their properties to third parties for their enjoyment and never cared about it.

On 20.03.2008, petitioner purchased the plaint 1st schedule property from the Mayilerumperumal, Thangapandi sons of late Ramasamy Nadar and also from Parvathy since another son Sudalaimuthu died having no issues. Petitioner also

cleared the mortgage and promissory note debts. The petitioner left to foreign and the property was supervised by his father-in-law. After returning from Foreign in 19.04.2012, petitioner again mortgaged the 1st schedule property to one Gopalakrishnan for Rs.2.1/2 lakhs and possession was handed over to the said Gopalakrishnan. But the said T.Gopalakrishnan gave it to respondent No.1 for cultivation and the mortgage was redeemed on 21.09.2012 and it was registered.

On 19.01.2013, the property was measured and it was found that the respondent No.1 encroached about 30 cents of land of 1st schedule property in the western side and some construction was also there. Petitioner asked the respondent No.1 to remove the construction in his place, because he was no right over it, but the respondent No.1 replied that already construction of house was made and he won't leave it. The encroached portion is shown as 2nd schedule in the plaint schedule. The petitioner came to know that on 18.09.2012 the father of the respondent No.1 made a settlement of his property to the respondent No.1 and on the basis of that on the same date 18.09.2012 the respondent No.1 also made some portion in favour of the respondent No.2, who is his wife.

So, petitioner has filed suit and filed I.A.1223/2015 injunction not to make any construction in the plaint 2nd schedule in which dispute is pending. After filling this petition the respondents 1 and 2 kept calm and did not do anything in the II schedule property. So the petition was closed on 06.06.2016 but now the respondents 1 & 2

making construction in the plaint II schedule from 25.04.2024, by putting pillars.

So the petitioner has filed this petition seeking the relief of permanent injunction till the disposal of the suit.

2) **Brief averments of the counter statement filed by the 1st respondent:**

It is submitted that on 22.06.1972 1st respondent father Palpandi Nadar has purchased 3 Acres out of 5 Acre 52 cents comprised in S.F.No.1058/1A, 1058/1B which is located as 2nd plot from Western side. After that Palpandi Nadar has sold major portion of land to Muthukrishnan, Vasantharaja and has settled 10.33 cents of land comprised in S.F.No.1058/1A, 1058/1B infavour of respondent No.1 on 18.09.2012. Thereafter respondent No.1 has settled one part of 10.33 cents in favour of his wife respondent No.2. So the entire 10.33 cents of property was possessed by this respondents and surrounding the property they erected fence also. The respondents in written statement pleadings stated that his father has sold major portion of properties to Muthuraja and Vasantharaja, but they has not been added as parties in this petition. Already petitioner has filed I.A.No.1223/2015 for injunction and it was closed. The respondents are constructing the house after obtaining permission from Panagudi Panchayat as per the Government scheme houses for all persons in their property only. There was no relationship between respondents land and petition mentioned property. Hence, the petition is to be dismissed.

3. Whether the petition is to be allowed or not?

4. Both sides heard. Petitioner states that both petition mentioned properties belongs to Ramasamy Nadar through sale deed dated 22.06.1972. After his death the properties was possessed by his 3 sons Mayileruperumal, Thangapandi and Sudalaimuthu. Among the 3 sons Sudalaimuthu died without issue. On 20.03.2008 petitioner has purchased the properties from Mayileruperumal, legal heirs of Thangapandi and from Parvathi. Petitioner, like his vendors has mortgaged petition mentioned properties in favour of Gopalakrishnan. However the said Gopalakrishnan has gave the property to 1st respondent for cultivation, later mortgage was redeemed. When petitioner after returning from foreign he comes to know that some portion of the 1st schedule of petition mentioned property was encroached by the Western owner Palpandi. The said Palpandi has settled the property in favour of his son respondent No.1. Thereafter, Respondent No.1 has settled part of his property in favour of Respondent No.2. When the property was measured on 09.01.2013, petitioner comes to know that 1st respondents has encroached 30 cents of land in 1st schedule of property. The encroached property is shown as 2nd schedule of petition mentioned property.

5. In the 2nd schedule of property 1st respondent made construction. So petitioner has filed the suit and also injunction application in I.A.No.1223/2015, after that, respondents No.1, 2 stopped from making constructions. While that being so on

25.04.2024 respondent No.1, 2 started to making constructions by putting pillars, so in order to prevent constructions in the 2nd schedule of petition mentioned property, petitioner has come forward with this application.

Per contra, the respondent states that respondent No.1 father Palpandi has purchased 3 Acres in S.F.No.1058/1A, S.F.No.1058/1B as per Ex.R1 sale deed. Thereafter he has sold major properties in favour of Muthukrishnan and Vasantha Raja. After that Palpandi has settled 10.33 cents of land comprised in S.F.No.1058/1A, 1058/1B in favour of respondent No.1 through Ex.R2 settlement deed dated 18.09.2012. Thereafter, respondent No.1 had settled one part of 10.33 cents in favour of respondent No.2. So only in their 10.33 cents of land respondents are constructing house as per Government Scheme house for all people.

6. On considering both sides it is founded that petitioner claims that both 1st and 2nd schedule of petition mentioned property belongs to him and in the 2nd schedule of suit property respondents are making constructions. However, the respondents pleaded that they are constructing only in their property of 10.33 cents.

Further on perusing records it is founded that suit has been filed in the year of 2013 itself and petitioner also has filed I.A. No.1223/2015 for permanent injunction. After filing of the suit the respondents stopped from making constructions and also I.A. No.1223/2015 has been closed. IA No.291/2017 is a commission petition filed by

the petitioner to measure the petition mentioned properties along with Taluk Surveyor, which has been allowed and the case is at the stage for submitting advocate commissioner report. Further, whether respondents had encroached the 2nd schedule of petition mentioned property will be decided only after full fledged trial. On perusing Ex.P8 photos it is founded that construction of house is in progress and respondent also admits that they are constructing house. So the respondents No.1 and 2 are prevented by temporary permanent injunction from making any constructions in the 2nd schedule of petition mentioned property till the disposal of the suit. The petitioner has proved prima facie case, balance of convenience also.

In the result, petition is allowed. Respondents No.1, 2 are prevented by Temporary permanent injunction from making any constructions in the 2nd schedule of petition mentioned property till the disposal of the suit. No costs.

This Order dictated to the Steno-Typist, directly typed in computer by her, corrected and pronounced by me in open Court, on 02th day of July 2024.

Principal District Munsif (FAC),
Valliyoar.

Witnesses examined on the side of petitioner & respondents: Nil

List of Documents on the side of the petitioner:

Exhibits	Dated	Documents	Type
Ex.P1	-	Notice with postal receipts(4 Nos)	Office copy

Ex.P2	-	Acknowledgment Card (3 Nos)	Original
Ex.P3	20.05.2024	Reply letter to petitioner counsel Thiru. T.A.Davidson	Original
Ex.P4	01.05.2024	Survey No 1058 FMB Sketch	Online Certified Copy
Ex.P5	-	Survey No 1058 FMB Sketch	Photostat Copy
Ex.P6	01.05.2024	Patta No 4558	Online download copy
Ex.P7	01.05.2024	Patta No. 4559	Online download copy
Ex.P8	-	Photos Nos.6 with CD	Original

List of Documents on the side of the respondents :

Exhibits	Dated	Documents	Type
Ex.R1	22.06.1972	Sale deed	Online Certified Copy
Ex.R2	18.09.2012	Settlement deed	Online Certified Copy
Ex.R3	18.09.2012	Settlement deed	Online Certified Copy
Ex.R4	28.05.2024	Patta No.4850	Online download copy
Ex.R5	28.05.2024	Patta No.4851	Online download copy
Ex.R6	13.04.2022	Proceeding letter of Executive Officer, Panagudi Town Panchayat	Original

Principal District Munsif (FAC)
Valliyoor.

Principal District Munsif Court,
Valliyoor
I.A.No.09/2024 in
O.S.No.32/2013
Draft/Fair Order
Dated: 02.07.2024