

IN THE COURT OF THE DISTRICT MUNSIF AT AMBATTUR.

PRESENT: TMT. FANNY RAJAN, B.A., B.L(Hons.),
DISTRICT MUNSIF, AMBATTUR.

Friday, the 27th day of January 2023.

INTERLOCUTORY APPLICATION NO.2 OF 2022

IN

INTERLOCUTORY APPLICATION NO.3 OF 2022

IN

INTERLOCUTORY APPLICATION NO.4 OF 2022

IN

ORIGINAL SUIT NO.284 OF 2022

R.Murugan

.....Plaintiff

Versus

1. P.Dinesh

2. Vivekanandan Jaganathan

.....Defendants

This petitions having come on 10.11.2022 before me for final hearing in the presence of Shri.K.Bharathi, L.Mayavan, G.Pugazvendan and M.Shankar, learned counsels for the Plaintiff, Shri.B.S.Manikandan, M.Sangeetha and S.R.Vivekanandan, learned counsels for the Defendants, upon hearing the arguments made by the learned counsel for the plaintiff and the defendants, and also on perusal of the records, having stood over for consideration till this day, this Court delivers the following:

COMMON ORDER

1. **I.A.No.2 of 2022:** This application is filed under Order 39 Rule 1 and 2 of CPC to grant ad-interim injunction to directing the 1st and 2nd defendants to remove the compound wall put up on the suit property, pending disposal of this suit.
2. **I.A.No.3 of 2022:** This application is filed under Order 39 Rule 1 and 2 CPC to grant ad-interim injunction to direct the 1st defendant to stop the construction on the suit property, pending disposal of this suit.

3. **I.A.No.4 of 2022:** This application is filed under Order 39 Rule 1 and 2 CPC to grant ad-interim injunction to direct the 1st and 2nd defendants not to disturb peaceful possession and enjoyment of the suit property of the plaintiff, pending disposal of this suit.

CONCISE STATEMENT OF PETITIONS FILED BY THE PETITIONER:

4. The petitioner has averred that he is the absolute owner of the suit property having purchased the same, through a registered Sale Deed from his father's elder brother's son and since doing agriculture for 14 years. In August 2022, when the Petitioner started construction of a room, the adjacent land owner 1st defendant had unnecessarily quarreled and stopped the construction. A police complaint was lodged on 29.08.2022.

5. On 01.09.2022, the 1st defendant brought Palavedu Village Administrative Officer and Village Surveyor to measure their property and 1 feet was measured in the Petitioner's suit property. Thereby marking 357¼ sq.ft. in favour of the defendants encroaching. The 1st defendant is wrongly claiming the same and unlawfully tried to include it in the 1st defendant's property. On 03.09.2022, the 1st defendant and his father started fencing encroaching the suit property. When the Petitioner tried to remove the unlawful fencing, the 1st defendant assaulted him and police took action against the 1st defendant. The Petitioner also insisted to take action against the erring Village Administrative officer and Village Surveyor. But was informed it is land dispute and asked to approach the appropriate court. However, despite undertaking, the 1st defendant is attempting to illegally encroach.

6. The defendants are taking undue advantage of the inadvertent mistake in the southern boundary, which is the patta land of his father's elder brother's son Mr.Vembuli, his vendor. The 1st defendant have encroached 2 ½ feet on the eastern side, 5 ½ feet on the western side, 71 ½ feet on the southern side and 70 feet on the Northern side totally 283 sq.ft. The 2nd defendant has encroached ½ feet on the Eastern side, 2 ½ feet on Western Side, 49 ½ feet on the southern side and 49 ½ feet on the Northern side totally 74 ½ sq.feet in the suit property. The 1st and 2nd defendants have purchased 3 ¼ cents and 2nd defendant completed construction 1 ½ years ago. But the sale deeds have been recently registered.

7. The 1st and 2nd defendant had illegally constructed a compound wall and destroyed the basement of the Plaintiff. There are no complaints against the petitioner made by the Defendants vendors. A representation dated 29.09.2022 has been lodged with the Thiruvallur District Collector and it is pending enquiry. On 15.10.2022, a police enquiry was conducted based on the representation sent to the Chief Minister's Special Cell and asked both to approach the court and not to proceed with the construction until then. The 1st defendant is not obeying and refused to stop the construction bringing more and more construction materials. Hence this petition.

CONCISE STATEMENT OF THE COUNTER FILED BY THE RESPONDENTS:

8. The respondents had denied the allegations that the Petitioner is doing agriculture in the suit property for 14 years and in fact it is a vacant land. The petitioner's suit property is only 10 cents out of 61 cents. The respondent's property

is on the northern side of the petitioner property. The respondents' property originally belonged to one Mr.Venkatesan, who had bequeathed the same upon his sons Mr.Sethu and Mr.Gaja by virtue of Will dated 21.02.2005. The said Mr.Sethu and Mr.Gaja partitioned among themselves by partition deed dated 09.12.2010 and later executed a General power of attorney to Sultan Moideen dated 06.04.2011. The above said power Agent executed an unregistered sale cum construction agreement with the first and second respondents on March 2022. Accordingly the construction was completed in the site of the 2nd respondent's property and in progress in the 1st respondent's property. On 14.07.2022 sale deeds have been executed in favour of first and second respondents. Also rectification deed dated 27.10.2022 was executed for the correction total extent in the first respondent's schedule. Since then the respondents were in possession and enjoyment of their property without any interference from anyone.

9. The respondents denied the allegations in paragraphs 3 to 36 of the petition. The petitioner had interfered with the respondent's property with the intention to grab the respondent's property. The petitioner without any right is threatening with ulterior motive to dispossess the respondents from their property. Further, the Petitioner had damaged the fence of the respondent's property. The petitioner has no right or title or possession over the respondent's property. During the construction work in the respondent's site, this petitioner threatened the respondents under the guise having title. The respondents brought the Palavedu Village Administrative officer and village Surveyor, along with the police took the measurements in the 1st respondent's

property and found that the measurement in the property and the measurement in the Rectification deed are all the same and correct as stated in the Rectification deed.

10. The petitioner and his men attempted to trespass into the respondent's property and disturbed the village Administrative officer and village surveyor from measuring the land and threatened the officers on duty to stop their work and pushed all the materials. Hence, a complaint was lodged by the Village Administrative Officer and Village Surveyor against the petitioner. After enquiry, the police advised the petitioner not to disturb the possession of the respondent's property. The petitioner with an evil intention to grab the respondent's property wantonly hidden the rectification deed and the petitioner filed the false suit against the respondents. Hence the Petitions have to be dismissed.

11. **POINT FOR CONSIDERATION:** Whether the petitioner is entitled for the relief of ad-interim injunctions as prayed for till the disposal of the suit?

DISCUSSION AND FINDINGS:

12. This Court heard the oral submissions made by both parties and takes into consideration the oral submissions and perused all the materials on record. For the sake of better discussion and to avoid ambiguity, the parties are referred to as per their rank in the Plaint. No oral evidence has been let in on behalf of either parties. The Plaintiff had relied on Ex.P1 to Ex.P.10 and the Respondents relied on Ex.R1 to R5 in I.A.No.2, 3, 4 of 2022.

13. Upon perusal of Ex.P1 is the Sale Deed in favour of the Plaintiff, Ex.P2 and Ex.P3 are the Sale deeds in favour of the Defendants respectively. Ex.R1 is the

Partition Deed in favour of the Defendant's vendors and the Ex.R2 is the Power of Attorney executed by the defendant's vendors. Ex.R3 is the Sale Deed in favour of the 1st defendant and Ex.R4 is the rectification Deed in his favour. The Ex.P1 to Ex.P3 and Ex.R1 to R4 are produced as certified copies and hence admissible as evidence.

14. Ex.P7 is the Complaint given by the Plaintiff on 28.09.2022 with postal receipts and online tracking acknowledgments. Ex.P10 is the complaint of the Plaintiff with online acknowledgement. Hence Ex.P7 and Ex.P10 complaints can be considered, however the online tracking acknowledgment and online generated receipt without a 65 B certificate has affected the evidentiary value of these complaints. Whereas Ex.R5 is the photocopy of representation for survey of the 1st defendant's property and hence not admissible in evidence for lack of compliance of mandate under Section 65 of the Indian Evidence Act.

15. From a thorough perusal of the documents, this court finds that Ex.P4 Series, Ex.P5 Series, Ex.P6 Series, Ex.P8 Series, are photographs with CD and Ex.P9 is online patta. Hences, these exhibited photographs and online patta being digital are admissible in evidence only when accompanied by a 65B certificate or produced in original, as mandated and held by the Hon'ble Supreme Court in ***Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others, (2020) 7 SCC 1***. In the instant case, the said exhibits are not accompanied by the 65B certificate and also not produced in original, this court is of the considered view that the same is not

admissible in electronic evidence. Hence, this court concludes that the Ex.P4 Series, Ex.P5 Series, Ex.P6 Series, Ex.P8 Series, Ex.P9 are not admissible in evidence.

16. This Court takes judicial note of the cardinal principles for granting ad interim injunction as laid down in ***Pradeep and another Vs. Ramankutty and others, 2000 MLJ 213***

“The cardinal principles for grant of ad interim injunction are as follows:

(1) Whether the persons seeking temporary injunction have made out a prima facie case. This is sine qua non.

(ii) whether the balance of convenience is in their favour, that is, whether it would cause greater inconvenience to them if the injunction is not granted than the inconvenience which the other party seeking injunction could be adequately compensated by the awarding damages and the defendant would be in a financial position to pay them and

(iii) whether the person seeking temporary injunction would suffer irreparable injury.

It is, however, not necessary that all the three conditions must obtain, with the first condition as sine qua non at least two conditions should be satisfied by the petitioners conjunctively and a mere proof of one of the three conditions does not entitle the person to obtain temporary injunction .”

17. The Plaintiff relied on Ex.P1 Sale Deed in his favour to substantiate this title. The devolvment of title upon the defendants have been established through Ex.R1 Partition Deed in favour of their vendors, the Ex.R2 Deed of Power of Attorney, Ex.P2 & Ex.R3 Sale Deed in favour of the 1st defendant, Ex.R4 rectification deed in favour of the 1st defendant and Ex.P3 Sale Deed in favour of the 2nd defendant. There is no dispute regarding the ownership and possession except for the extent of the properties owned by both parties. This Court finds that from a thorough reading of the pleadings and Ex.P7, Ex.P10 complaints it is clearly evidenced that issue in

dispute is regarding the identification, demarcation and alleged encroachment in the suit property by the defendants.

18. This Court upon perusing Ex.P1 Sale deed in favour of the Plaintiff finds that “தென்சென்னை பதிவு மாவட்டம், ஆவடி சார்பதிவு வட்டம், திருவள்ளூர் மாவட்டம், அம்பத்துார் வட்டம், நெ.5, பாலவேடு கிராமத்தில், சர்வே நெ.497/2 ல் அடங்கிய, 61 சென்ட் கொண்ட நஞ்சை நிலத்தில் 10 சென்ட் கொண்ட விவசாய நிலத்திற்கு நான்கு பக்க எல்லைகளும், அளவுகளும்.

நான்கு பக்க எல்லைகள்

வடக்கில்	:	வெங்கடேசன் நிலம்
தெற்கில்	:	ஆசாபாய் நிலம்
கிழக்கில்	:	வினாயகம் நிலம்
மேற்கில்	:	கோவிந்தராஜ் நிலம்

ஆக கூடும் மொத்தம் 10 சென்ட் கொண்ட விவசாய நிலம் மட்டும் இன்று தேதியில் என்னால் தங்களுக்கு சுத்த விக்கரையப் பத்திரம் எழுதிக்கொடுக்கப்பட்டது.

19. This Court on perusal of Ex.P2, Ex.R3 Sale Deed in favour of the 1st defendant and Ex.R4 Rectification Deed in favour of the 1st defendant finds that as per the Schedule “திருவள்ளூர் தலைமை பதிவு மாவட்டம், ஆவடி சார்பதிவாளர் அலுவலகம், திருவள்ளூர் மாவட்டம், ஆவடி வட்டத்திலடங்கிய நெம்பர் 9 பாலவேடு மதுரா மேலப்பேடு கிராமம் 867 நெம்பர் பட்டா தாக்கலாகியுள்ள சர்வே நெம்பர் 497/1B-ல் ஏ.0.14 செண்ட்டில் மேற்கு பக்கமாக உள்ள ஏ.0.04.2 செண்ட் (1828 சதுரடி) மட்டும் இந்த பிழைத்திருத்தல் பத்திரத்திற்கு உட்பட்டது.

இதற்கு நான்கு பக்க எல்லைகள்:

வடக்கில்	:	பழக்கத்தில் உள்ள 30 அடி சாலை
தெற்கில்	:	சர்வே நெம்பர் 497/2A
கிழக்கில்	:	திரு.விவேகானந்தன் ஜெகன்நாதன் கிரையம் பெறும் நிலம்
மேற்கில்	:	சர்வே நெம்பர் 497/1B-ல் அடங்கிய மிகுதி நிலம்

இதன் மத்தியில்

வடக்கு பக்கம் : 73 அடி 0 அங்குலம்

தெற்கு பக்கம் : 73 அடி 0 அங்குலம்

கிழக்கு பக்கம் : 24 அடி 10 அங்குலம்

மேற்கு பக்கம் : 26 அடி 0 அங்குலம்

ஆகமொத்தம் ஏ.0.04.2 செண்ட் (1828 சதுரடி) மட்டும் இந்த பிழைத்திருத்தல் பத்திரத்திற்கு உட்பட்டது.

20. This Court on perusal of Ex.P3 finds that the 2nd defendant has purchased the property as per Schedule “திருவள்ளூர் தலைமை பதிவு மாவட்டம், ஆவடி சார்பதிவாளர் அலுவலகம், திருவள்ளூர் மாவட்டம், ஆவடி வட்டத்திலடங்கிய நெம்பர் 9 பாலவேடு மதுரா மேலப்பேடு கிராமம் 867 நெம்பர் பட்டா தாக்கலாகியுள்ள சர்வே நெம்பர் 497/1B-ல் ஏ.0.14 செண்ட்டில் மேற்கு பக்கமாக உள்ள ஏ.0.03¹/₄ செண்ட் (1467 சதுரடி) கொண்ட நிலம் மட்டும் கிரையம்.

இதற்கு நான்கு பக்க எல்லைகள்:

வடக்கில் : புழக்கத்தில் உள்ள 30 அடி சாலை

தெற்கில் : சர்வே நெம்பர் 497/2A

கிழக்கில் : சர்வே நெம்பர் 488/4A

மேற்கில் : திரு.P.தினேஜ் அவர்கள் கிரையம் பெறும் நிலம்

இதன் மத்தியில்

வடக்கு பக்கம் : 64¹/₂ அடி

தெற்கு பக்கம் : 64¹/₂ அடி

கிழக்கு பக்கம் : 23 அடி

மேற்கு பக்கம் : 22¹/₂ அடி

ஆகமொத்தம் ஏ.0.03¹/₄ செண்ட் (1467 சதுரடி) கொண்ட நிலம் மட்டும் கிரையம், மேற்படி சொத்து பாலவேடு கிராம பஞ்சாயத்து எல்லைக்கும் வில்லிவாக்கம் ஊராட்சி ஒன்றிய எல்லைக்குட்பட்டது.”

21. The first and foremost aspect for the Plaintiff to seek a relief of adinterim injunction, he has to clearly identify his property and his possession. In this case from Ex.P1 it is evidenced that the Plaintiff purchased 10 cents out of 61 cents of land in

S.No. 497/2. However, the measurement of the property on the four sides has not been properly identified. The mere boundaries would not be sufficient to clearly establish the extent of property on all the four boundaries in fact even as per the plaintiff, there is an error in mentioning the southern boundary. The vagueness in respect of the measurements has thus failed to clearly demarcate the suit property in favour of and in possession of the Plaintiff. Without clear identification of the extents on the four sides, this court is unable to prima facie conclude that there is an encroachment in the suit property.

22. This court is of the considered view that the suit has been filed for permanent injunction only and there is no relief sought for recovery in respect of the alleged encroachment by the 1st defendant being 2 ½ feet on the eastern side, 5 ½ feet on the western side, 71 ½ feet on the southern side and 70 feet on the Northern side totally 283 sq.ft. and the 2nd defendant being ½ feet on the Eastern side, 2 ½ feet on Western Side, 49 ½ feet on the southern side and 49 ½ feet on the Northern side totally 74 ½ sq.feet in the suit property, as reflected in the rough sketch annexed with the plaint.

23. Only when the Plaintiff is able to prove the extent of his property on each boundary, this court would be in a position to conclude if there is an encroachment or not as alleged. The mere rough sketch annexed does not establish the boundaries and extent. In fact the Plaintiff has only sought for removal of compound wall as a 1st relief in the suit. Without a prima facie to decide and identify the extent of the suit property of the Plaintiff, this courts considers it premature to conclude that there is an encroachment upon the same by the defendants. This court is of the considered view

that if there is any encroachment as alleged it can be decided only on completion of trial and it is premature to decide the same at this juncture with the available evidence, before commencement of trial.

24. In light of the above discussions, this court finds that the Petitioner has not established a prima facie case and the balance of convenience in his favour regarding the prayer sought for in I.A.No.3 and 4 of 2022 seeking for interim injunction to stop construction and not to interfere with his possession. From the pleadings, it is evidenced that the 1st defendant is continuing with the construction, while the 2nd defendant construction has already been completed 1 1/2 years back. Even if there is any encroachment, if duly proved in trial, the Plaintiff is always entitled to the respective reliefs for removal of the same upon the cost of the Defendants themselves. Further, the nature of monetary uncompensatable loss that may be caused to the Petitioner is also not clearly established from the pleadings. Hence, no prejudice would be caused to the Petitioner. On the other hand, in the absence of prima facie case, any interim injunction to stop the construction might be prejudicial to the defendants. The defendants are proceedings with the construction thoroughly aware of the consequences of such construction if encroaching any of the suit property and the defendants shall be held responsible for their conscious acts done during his penderes. Hence, this court is inclined to dismiss this Petition for interim injunction not to construct in I.A.No.3 of 2022 and not to interfere in I.A.No.4 of 2022.

25. This court is of the considered view that the removal of compound wall is a mandatory injunction and the Plaintiff cannot seek a permanent relief in an interim application, especially when the same prayer is sought in the suit. Hence, the relief in I.A.No.2 of 2022 to remove the compound wall pending the suit, is in directly seeking for a permanent relief without conducting trial. This court is of the considered view that the relief regarding removal can be decided only on completion of trial based on the oral and documentary evidence. Hence, the relief in I.A.No.2 of 2022 has to be dismissed.

26. Considering the nature of the petition, the contentions regarding the relationship between the parties and the relief sought for, this Court is of the considered view that the parties shall bear their own costs.

27. **RESULT :-**

I.A.No.2 of 2022: In the result, this Petition is dismissed. No costs.

I.A.No.3 of 2022: In the result, this Petition is dismissed. No Cost.

I.A.No.4 of 2022: In the result, this Petition is dismissed. No costs.

Dictated to the steno-typist, transcribed by her in the desktop, corrected and pronounced by me in the open Court on this the 27th day of January 2023.

DISTRICT MUNSIF,
AMBATTUR.

PETITIONER AND RESPONDENTS SIDE WITNESSES: NIL

PPETITIONER SIDE EXHIBITS:

Exhibit P1	01.07.2008	Sale deed – On line certified copy
Exhibit P2	14.07.2022	Sale deed – On line certified copy
Exhibit P3	14.07.2022	Sale deed – On line certified copy
Exhibit P4	--	Photographs (3 Nos) and compact disk
Exhibit P5	--	Photographs (2 Nos) and compact disk
Exhibit P6	--	Photographs (4 Nos) and compact disk
Exhibit P7	28.09.2022	Complaint letter from the petitioner – xerox copy and postal receipt – Original and online tracking acknowledgment
Exhibit P8	--	Photographs (2 Nos) and compact disk
Exhibit P9	--	Patta – Online print
Exhibit P10	29.09.2022	Complaint letter from the petitioner to the Collector, Tiruvallur – Office copy and Acknowledgment – Online copy

RESPONDENTS SIDE EXHIBITS:

Exhibit R1	09.12.2010	Partition deed – On line certified copy
Exhibit R2	06.04.2011	General power of attorney – Certified copy
Exhibit R3	14.07.2022	Sale deed – Online Certified copy
Exhibit R4	27.10.2022	Rectification deed – Online Certified copy
Exhibit R5	30.08.2022	Survey application of the 1 st defendant's property and e-challan – xerox copy

DISTRICT MUNSIF,
AMBATTUR.