

**IN THE COURT OF DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
MADHAVARAM**

Present: J. Saravana Kumar, B.A.,B.L.,(Hon's)
District Munsif cum Judicial Magistrate, Madhavaram (FAC)
Thursday, the 07th day of March 2024
IA . No. 2/2023 in OS. No.55/2023

Mrs. N. Rajalakshimi,
Chennai - 600 066.

... Applicant / Plaintiff

- Vs -

M/s. Gurusamy Builders
Rep by its Proprietor Baskar & Anr

... Respondents / Defendants

The applicant had filed the present petition against the respondents, praying for, ad interim injunction restraining the respondents and their men from in any way interfering with petitioner's peaceful possession and enjoyment of the petition scheduled property.

CASE OF THE PETITIONER AS FOLLOWS:-

1. In short, originally the petition scheduled property ie., a vacant site ad measuring 1000 sq.ft, comprised in survey number 30/2, situated in Plot no:13 B & 13C, Jai Maruthi Nagar Annex, situated in Kathirvedu Village belong to the second respondent herein. During, the year 2014vide a sale deed dated 09.04.2014, registered as Document No: 4938/2014, the petition scheduled property was alienated by the second respondent in favour of the petitioner herein. From then, the petitioner is the owner of the said petition scheduled property. The petitioner is also the owner of a property ad-measuring 41 cents situated in survey number 30/1A. According to the plain plan submitted as a

document, it reflects that the property of petitioner in Survey No: 30 / 1A, is located adjacent to the property in dispute ie., petition scheduled property. By purchasing the petition scheduled property from second respondent, the petitioner had made an arrangement to make it as a private road and had divided the land present in survey no: 30 / 1A into 8 plots. Thereafter, the petitioner had alienated plot no: 1, plot no:2, plot no.3 to various third parties. Plot No.4 and Plot No.8 were settled in favour of her daughter and son, respectively. The petitioner is also residing in plot No.8 ie., plot settled in favour of her son. The petition scheduled property is used as a private pathway of the petitioners. It also reflects that the second respondent had entered into a power of attorney with the first respondent, a builder. On the southern part of the petition scheduled property, first respondent had put up a construction of apartments containing 15 units in the name of "G.S. Mullai". Moreover, both the respondents by colluding with each other had put up a huge gate on the northern side of their apartment. In specific, the said gate is put up on the southern side of petition scheduled property, paving ingress and egress to the said scheduled property. By contending that the petition scheduled property is a private road and whole fully belonging to the petitioner, the respondents by colluding with each other are trying to have ingress and egress through the private scheduled property and disturbed the peaceful possession of the petitioner. Thereby, the petitioner had prayed for an ad interim injunction against the respondents seeking to restrain them from disturbing the peaceful possession and enjoyment of the petition scheduled property.

2. After taking the petition on record, the notice was issued by this Court to the respondents. The notice to respondent No.1 returned as served.

The notice to respondent No.2, returned as "no such person". Private notice was also effected against the respondent No.2. However, the said private notice also returned as "no such person". Thereafter, substituted service was ordered against respondent No.2. In obligeance, the petitioner effected paper publication on 08.11.2023 in the daily English Newspaper ie., "Business Standard", circulating within the city of Bangalore. Even then, the respondent No.2 did not either appear in person or through any of her Counsel and on 01.12.2023, the respondent No.2 was set ex-parte.

3. POINT FOR CONSIDERATION:-

Whether the application under Order 39 Rule (1) & (2) Cpc., is to be allowed and whether the petitioner is entitled to a relief of ad interim injunction against both the respondents by injuncting them from disturbing the peaceful possession and enjoyment of petitioner scheduled property of the petition herein? Is the point to be considered.

DISCUSSION:

4. As stated earlier, it was the sole contention of the petitioner, that she is the real owner to the petition scheduled property. Way back in the year 2014 and vide Document no:4938/2014, Resp No:2 had alienated the petition scheduled property in favour of the petitioner. However, even after having a sufficient knowledge that the petitioner is in the sole possession and enjoyment of the petition scheduled property, both the respondents by colluding with each other are trying to put up a huge gate on the northern part of the apartment constructed by respondent no:1 and are trying to disturb the possession and the enjoyment of the petitioner.

5. In support of the above contention, the petitioner filed several documents. The perusal of document no: 1956/1993 dated:07.01.1993

would reflect that the petitioner's mother named Kanthammal had settled a property admeasuring 41 cents comprised in survey no:30/1 A in favour of the petitioner herein. The document No:4938/2014, dated:09.04.2014, would reflect that the second respondent had alienated a vacant site ad-measuring 1000 sq ft of land comprised in survey no: 30 / 2, in favour of the petitioner herein. It also reflects that the land ad-measuring 500 sq ft out of 2000 sq ft in plot no: 13 B and 500 sq out of 1995 sq ft of land present in plot no: 13 C had been alienated to the petitioner herein. The document no: 12716/2020 as well as document no:12715/2020 ie., settlement deeds would reflect that the petitioner had divided her property situated at survey no: 30/ 1 A into 8 units and had settled plot no.4 & plot no.8 in favour of her daughter and son. Several bills were produced as documents. It reflects that the petitioner had purchased several building materials ie., materials used to put a road in the name of her son. The said road is the petition scheduled property. The documents dated: 30.07.2023, would reflect that the petitioner had issued a legal notice against 1st respondent calling upon him to refrain from putting up a gate on the northern side of their apartments and refrain from disturbing the peaceful possession of petition scheduled property. The encumbrance certificate was also filed. The entry no:4 in the EC would reflect the alienation made by 2nd respondent in favour of the petitioner herein. The entry no.7 would reflect the execution of power of attorney by the 2nd respondent and in favour of 1st respondent herein. Several photographs were also produced before this court to exhibit that the respondents had put up a pathway paving way to having ingress and egress to the petition scheduled property.

6. By going through the pleadings as well as the documents supported before this Court, it is clear that the petitioner is the owner of the petition scheduled property. On 09.04.2014 and vide document no.4938/2014, the 2nd respondent had alienated the petition scheduled property in favour of the petitioner herein. Though, a legal notice dated: 30.07.2023 was issued by the petitioner against 1st respondent, the 1st respondent had put up a pathway containing a huge gate having path into the petition scheduled property.

7. Though, Court notice was issued to the respondent no.1 and the same had been acknowledged by him, neither respondent no.1 nor his counsel appeared before this court. As stated above, the respondent no.1 was set exparte on 31.10.2023. Similarly, even after effecting notice against respondent no.2 and after effecting paper publication on 08.11.2023, the respondent no. 2 failed to appear before this court, either in person or through any of her counsel and was set exparte on 1.12.2023. Till today, neither of the respondents appeared before this court and filed an application to set aside the exparte orders, respectively. This court is constrained to arise at a conclusion that the respondents had decided not to participate in the proceedings and counter to the pleadings put forth by the petitioner herein. With no other alternative, this court accepts the contentions put by the petitioners to be true. It is also to be noted that the records primafaciely establish that the petitioner is the real owner of petition scheduled property and both the respondents by way of putting up a gate on the southern side of petition schedule property trying to interfere with the peaceful possession and enjoyment of petition scheduled property by the petitioner herein. It was also the submission of the petitioner that it is a private road and not had been gifted to the village

panchayat. As such, this court is of the view that the petitioner had established prima facie case in the present petition and had also established that the respondents are trying to interfere with the peaceful and possession of the petition scheduled property. The balance of convenience is in favour of the petitioner herein. On considering the above facts and the documents produced before this court, this court is of the view that suitable order injuncting the respondents from disturbing the peaceful possession and enjoyment of petition scheduled property of petition is deem necessary, failing which the petitioner would be put to irreparable loss.

RESULT:

Hence, in the result the application is hereby allowed and the respondents are hereby injuncted from disturbing the peaceful possession and enjoyment of the petition scheduled property of the petitioner herein, pending trial of the suit.

The Order was dictated by me & typed directly by Steno typist in computer. Verified and pronounced by me in the Open Court on this the Thursday, 07th day of March 2024.

Sd / Thiru. J. Saravanakumar, B.A., B.L., (Hon's)

**District Munsif cum Judicial Magistrate,
Madhavaram (FAC)**