

**IN THE COURT OF DISTRICT MUNSIF, KATPADI, VELLORE DISTRICT
PRESENT: THIRU. K.VENKATESAN, B.A.,B.L.,
DISTRICT MUNSIF, KATPADI.**

Monday, this the 18th Day of March – 2024

**I.A.No. 211 of 2020
In
O.S.No. 70 of 2020
(CNR.No.TNVL23-000125-2020)**

R.Chinna

.....Petitioner/Plaintiff

-Vs-

1. V.Vasantha
2. V.Illayaraja
3. V.Bakiyaraj
4. V.Saritha
5. B.Swetha
6. Ashwini
7. Amavasai @ Amose
8. Pushpa
9. Iyappan
10. Shoba
11. Shamini

.....Respondents/Defendants

This petition has come up today before this Court for orders, and upon hearing the arguments of Thirumathi. J.Kanchana Arivazhgan, the Counsel for the petitioner/plaintiff, and though the Respondents-1 to 11 were appeared through Counsels, and filed Counter, but not turned up for enquiry, and thereby, upon perusing the petition, counters and the available case records, and having stood over for consideration till this day, this Court delivers the following order on merits:-

ORDER

This petition has been filed by the Petitioner/Plaintiff under Order 39 Rule 1 & 2 and Section 151 of Code of Civil Procedure to grant an order of Temporary Injunction, thereby restraining the respondents/defendants, their men, agents, servants, and subordinates from causing any manner of interference with the construction work held by the petitioner in the Suit property till the disposal of the Suit, in the same line ad-interim injunction.

1. **Brief averments of the affidavit filed by the petitioner is as follows:-**

1.1 The petitioner is the plaintiff, and he filed the above Suit as against the respondents for Injunction, and the Schedule mentioned property is a House Plot, and part and parcel of the Lands bearing Old S.No.277/6, and New S.No.433 to the extent of 1360 Sq.ft., situated in Kalinzur, Gandhi Nagar, Vellore and the said property Originally belonged to his father who got the properties by two parts and he obtained a portion of the Suit property by way of Registered Settlement Deed dated 31.07.1995 executed by his mother Pattammal vide Doc.No.2890/1995 at SRO, Katpadi, and by way of a Registered Sale Deed dated 01.07.2002 executed by one Purushothaman for valid Sale Consideration vide Doc.No.2679/2002 at SRO, Katpadi.

1.2 When the petitioner's father obtained the property, it was consist of a House and Vacant site, and his father was residing in the house along his family members, and he availed EB Connection in his name, and he was in peaceful possession and

enjoyment of the said property from the day one he obtained the property in the above manner, and he was allotted Patta in his name, and was paying necessary taxes to the Government. Subsequently, due to the long period the House became old and was in damaged condition and not in fit condition to reside more, and hence, the petitioner's father planned to demolish the house with a plan to construct new house, but due to his old age, he was unable to maintain the property, and therefore he bequeathed the Suit property to the petitioner by way of Registered Settlement Deed dated 13.08.2020 vide Doc.No.4843/2020 at SRO, Katpadi.

1.3 After the execution of the said Settlement Deed, the petitioner became the absolute owner of the petition mentioned property, and presently himself under the capacity of the absolute owner of the property, he planned to construct a house in the petition mentioned property for the purpose to reside over the same along with the entire family members, and he availed loan from his office to construct the house. Then, the petitioner started the construction work in the last week of August 2020, further on 01.09.2020 when his parents were inspecting the construction work, the respondents herein who are adjacent house owners colluded together in front of the Suit property without any right, title, possession over the same, with an intention to stop the construction work and illegally trespassed into the Suit property and stopped the construction work by threatening his parents and the reasons, who were engaged for the construction, with dire consequences, and used undue influence as against his parents,

and assaulted them with deadly weapons, and thereby caused severe physical and mental agony to him, and his parents, and illegally stopped the construction work.

1.4 The petitioner's parents were admitted into Government Hospital, Adukamparai, Vellore due to the injuries caused by the respondents, and his mother preferred a complaint before the Viruthampet Police Station, Vellore as against the respondents, due to the illegal activities, but the Police refused to receive the complaint stating that almost all the Police officials infected with Covid-19, and not in a position to enquire the matter further more, and they advised that the dispute aroused between the petitioner and the respondents one is Civil in Nature, and instructed to approach the the competent Court of Law for proper relief.

1.5 Even after the complaints, the respondents not restricted their illegal activities and keep on they are trying to create lot of problems to the petitioner by inducing undue influence, and arm twisting methods, and therefore, he concerned to file this petition before this Court to obtain Temporary Injunction, and if the respondents not restricted from their illegal activities, he will be put to irreparable hardship, and prayed to allow the petition.

2. In stead of filing Counter, the respondents-1 to 6 have filed a Memo before this Court on 19.04.2021 wherein stating that they are adopting the Written Statement filed by them as Counter to this Petition. In Written Statement, the defendants refuted all the averments of the plaint and state that one Late. Manickam had two wives i.e., 1st wife

– Padavettammal, had one son Kuppusamy; and another wife – Pattammal, had 5 sons namely 1. Vinayagam, 2. Venkatesan, 3. Kuppusamy, 4. Raghu and 5. Amavasai @ Amose.

2.1 The Suit property and other properties originally belonged to Padavettammal who purchased under the Registered Sale Deed dated 02.02.1936, vide Doc.No.116/1936, and from the date of purchase, she had been in possession and enjoyment of the said property till 1961, and she sold the said property to Pattammal and she executed a Sale Deed in favour of Pattammal via Registered Sale Deed Doc.No.421/1961, and the late Pattammal and her sons were filed the Suit before the District Munsif Court of Gudiyattam against Christian and others, in O.S.No.720/1988 for Declaration and Permanent Injunction which was decreed on 02.01.1988, and hence the Suit property and other property, the said late. Pattammal was an absolute owner.

2.2 The above said Pattammal settled her property including the Suit property and other properties to her sons, and she executed the Settlement Deed in favour of 5 sons, and from the date of Settlement, they are in possession and enjoyment of the aforesaid property including the plaintiff's father and the defendants are common enjoyment of way (Sandhu Vazhi) measuring 9 feet breadth on the North to South and 3 feet breadth on the East to West, and 175 feet Length till date.

2.3 One of the legal heir namely Venkatesan died, the other Co-sharers creating a problem not to use and interfering the Common way and threatening to the defendants

in so many time for not to use the Common path way with the other sharers, and the defendants-1 to 6 are the absolute owner of the Common path way in 9 feet breadth on the North to South, and 3 feet breadth on the East to West, and 175 feet length till date.

2.4 The defendants convened the Panchayat but went in vain, and the 4th defendant gave a complaint before the Viruthampet Police Station, Vellore on 23.08.2019 against the M.Kuppusamy and M.Raghu (the petitioner's father) and their son, daughters for obstructing the Common path way and threatening to kill, and then the said Police officer enquired the matter, and they advice both parties, it is purely Civil Matter, and get remedy to the Civil Court, and the petitioner's father and other defendants have no right to obstruct the defendants' common enjoyment of path way, and, hence the defendants-1 to 4 have filed the Suit for declaration and for permanent injunction as against the M.Kuppusamy, M.Raghu (the petitioner's father), R.Rosy and M.Ammavasai @ Amose on the file of the Additional District Munsif Court, at Vellore in O.S.No.208/2019 and the same is pending before this Court. Now the petitioner filed the Suit suppressed all the truth before this Court and, the above Suit filed by the plaintiff for bare injunction without the seeking the relief of declaration of his title over the Suit property is not at all maintainable either in law or on facts and prayed to dismiss the Suit.

3. **Brief averments of the counter filed by the 7th respondent is as follows:-**

(Adopted by the Respondents-8 to 11)

3.1 The petition filed by the petitioner is not at all maintainable and the respondents denied the allegations mentioned in the petition and put the petitioner to strict proof of the same, and state that in the year 1995, the 7th respondent's mother Pattammal had executed a Settlement Deed in favour of the 7th respondent in respect of Old S.No.277/6, wherein mentioned clearly mentioned about the Common pathway (Santhu Vazhi), and from the date of Settlement Deed, the 7th respondent is enjoying the common pathway as well as other respondents are also enjoying the same as per the said Deed.

3.2 In order to grab the property from the hands of respondents and without any basis of documents, the petitioner has filed the present Suit. The respondents state that they never or ever caused any interference as alleged and they are enjoying the Common pathway for 3 generations. There is no connection to the petitioner with the common path way, and prayed to dismiss the petition with costs.

4. Neither the petitioner nor the respondents have placed any oral or documentary evidence before this Court.

5. **Points for Consideration:-**

a) Whether the petitioner is entitled for the relief as prayed for?

6. **Answering for the Point:-**

Heard. Records Perused. On careful perusal of the case records, it is found that the petitioner is the plaintiff, and the respondents herein are the defendants-1 to 11 in the above Suit filed for the relief of Permanent Injunction restraining the defendants, their men, agents, servants, and sub-ordinates from causing any manner of interference with the construction work held by the plaintiff in the Suit property, and for costs.

7. According to the case of the petitioner/plaintiff is that he is having title over the Suit property under the Registered Settlement Deed dated 13.08.2020 vide Doc.No.4843/2020, and he planned to construct a house in the Suit property for the purpose to reside with his entire family members, and he availed loan from his office, and he started construction work in the last week of August 2020 & further on 01.09.2020, but the respondents joint together and without any right, title, possession over the Suit property, and stopped the construction work, and therefore, he constrained to file this petition to obtain temporary injunction.

8. On the contra, the defendants states that the plaintiff has no right to construct in the Common enjoyment of Path way (Santhu Vazhi), and they are also claiming ownership in Common pathway, and enjoying the same, and there is no cause of action to file the above Suit, and the petitioner has suppressed the earlier Suits filed by them, and prayed to dismiss the petition with exemplary costs.

9. On perusal of records, the issues were framed as early as on 07.09.2021 and the case is pending at Trial stage. It is pertinent to note that the prayer in the present petition and in the main Suit is one and the same. It is a settled law that any interim order having the effect of granting a final relief should not be granted. In this connection, this Court wants to bank the Judgment of our **Hon'ble High Court of Madras** in the case of **Bank of Tokyo Mitsubishi Limited, Mumbai -Vs- Spartex Ceramics India Limited, Chennai** reported in **(2007) 3 MLJ 203** wherein held that, in deciding an interlocutory application the Court cannot grant the main relief sought for in the Suit at the interim stage which would otherwise tantamount to a pre-trial decree. This dictum laid down by our Honourable High Court is clearly applicable to the present case.

10. Further, in the present case, it appears that the rights of the parties with respect to the Suit Schedule property is at dispute. The respondents have also pleaded that the petitioner has no right to construct in the Common enjoyment of Path way (Santhu Vazhi), and they are also claiming ownership in Common pathway, and enjoying the same. Further, it is also to be decided whether there has been any construction on the Common Path way or only in the Suit property. This court is of the view that adjudication on the basis of the aforesaid pleadings and records require detailed evaluation of evidence and the same cannot be decided at this interlocutory

stage and that the relief sought for in this petition has to be decided only upon conducting a full trial in the main Suit.

11. Considering the above said facts and circumstances, this Court is not inclined to grant the relief as prayed for in this petition at this stage. Accordingly, the point is answered against the petitioner.

12. **Result:-**

In fine, from the above said discussions, in the interest of justice, this petition is dismissed. No costs.

-//Dictated by me to the Steno-typist, who directly typed the same, corrected and pronounced by me in the Open Court, on this the 18th Day of March – 2024.//-

(Sd/-).. K.Venkatesan
DISTRICT MUNSIF
KATPADI

Both side documents and witnesses: Nil

(Sd/-).. K.Venkatesan
DISTRICT MUNSIF
KATPADI