



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:30.06.2025

Pronounced on: 01.08.2025

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. PD. No.1827 of 2024
and CMP. Nos.9659 & 9657 of 2024**

N.Siddharth

Petitioner

Vs

1.Jayalakshmi

2.K.M.Srihari

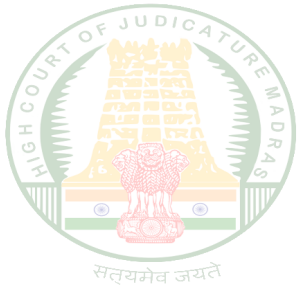
3.K.M.Ashwinprabu

Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed by the order of the II Additional Sub Court, Coimbatore in C.M.A. No.23 of 2022 dated 03.01.2024.

For Petitioner : Mr.S.Parthasarathy,
Senior Counsel, for
Mr.P.Dinesh Kumar

For Respondents : Mr.N.Manoharan for
for Mr.N.Ponraj

**ORDER**

The revision has been filed by the plaintiff. The Interlocutory Application seeking an interim injunction in I.A. No.2 of 2022 was granted in favour of the plaintiff by the Trial Court. However, the said order came to be reversed in Appeal in C.M.A. No.23 of 2022 dated 03.01.2024 on the file of the II Additional Sub Court, Coimbatore. Aggrieved by the reversing findings, the plaintiff is before this Court.

2. I have heard Mr.S.Parthasarathy, learned Senior Counsel for Mr.P.Dinesh Kumar, learned counsel appearing for the petitioner and Mr.N.Manoharan for Mr.N.Ponraj, learned counsel appearing for the respondent/defendant.

3. The learned Senior Counsel would contend that the plaintiff has filed the suit for the relief of a permanent injunction, to restrain the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. According to the plaintiff, the suit property belongs to one Krishnasamy Gouder who had four sons. The property was divided under a family partition, a registered partition dated 31.12.1959 in Doc. No.613 of 1960. The plaintiff's grandfather



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Venkatachala Gouder was one of the parties to the said partition deed and schedule C to the said partition deed was allotted to him. Subsequent to his death, his legal heirs succeeded to the C Schedule property to the 1959 partition deed and the father of the plaintiff, Nagarajan and other legal heirs viz., Raveendran and Bakiyalakshmi have subsequently, further partitioned the properties of Venkatachala Gouder on 09.10.1987, under which A schedule property was allotted to Bakiyalakshmi and B schedule was allotted to the plaintiff's father Nagarajan and Ravindran jointly. Subsequently, the plaintiff's father Nagarajan and Raveendran entered into a partition deed on 17.11.2021 in Doc. No.9712 of 2021 and Schedule A property thereunder was allotted to the plaintiff's father.

4. It is the case of the plaintiff that the said property has been settled on the plaintiff by his father in and by a registered settlement deed dated 06.05.2022, alleging that the defendants trying to take advantage of a cart track mentioned in the partition deed dated 31.12.1959 are attempting to run lorries through the plaintiff's property and there being no cart track in the plaintiff's property, but only in the property allotted to Krishnasamy Gouder that lay further south of the plaintiff's property, the suit came to be filed.



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5. The contention raised by the defendant is that in the partition deed dated 31.12.1959 registered as Doc. No.613 of 1960, there is a clear mention of a cart track that runs through the suit property on the south side of S.No.173/2 and considering the rival claims, the Trial Court had rightly granted an interim injunction, prima facie, finding that there was no cart track inside the plaintiff's property. The learned Senior Counsel would however state that the First Appellate Court was carried away and misled by the mentioning of a cart track in the partition deed dated 31.12.1959, and misinterpreting the schedule to the partition deed, has reversed the well considered order of the Trial Court.

6. The learned Senior Counsel would also state that the plaintiff had also taken I.A. No.4 of 2023 to produce additional documents to establish that the alleged cart track mentioned in the partition deed was not in existence and that the Trial Court has eventually dismissed the said Application also.

7. Per contra, Mr.N.Manoharan, learned counsel for the respondents would contend that the First Appellate Court has rightly interpreted Ex.P1, partition deed dated 31.12.1959 in coming to the



conclusion that a cart track exists within the plaintiff's property and therefore, the defendants cannot be restrained from using the same. The learned counsel would also state that subsequent to the grant of injunction, the plaintiff has hurriedly blocked the cart track and thereby prevented ingress and egress which was available to the defendants through the said cart track.

8. He would further state that there was no imminent hurry or haste required to be shown by the plaintiff in this regard and the fact that the plaintiff has created an obstruction after obtaining the interim order in the suit, clearly goes to show the ulterior motives of the plaintiff. He would further state that the First Appellate Court has rightly considered the documents available on record, more specifically, the partition deed dated 31.12.1959 and the same does not require interference.

9. I have carefully considered the submissions advanced by the learned counsel on either side.

10. The suit has been filed for bare permanent injunction to restrain the defendants or anybody claiming through them from



interfering with the plaintiff's possession and enjoyment of the property in S.No.173/2A measuring 1.52 acres. As rightly contended by Mr.N.Manoharan, nowhere in the plaint, there is any mention of the cart track. The case of the plaintiff in the said suit is that under the partition deed, property allotted to Venkatachala Gouder was an extent of 1.52 acres in S.No.173/2A. However, patta was issued only in respect of 1 acre 49 cents and hence, the plaintiff has given a representation to the Assistant Director of Survey Department to rectify the said mistake. After conducting enquiry, the representation of the plaintiff has been replied to stating that variance in extent is within the permissible allowance of 5% and hence, no correction is required to be carried out in the revenue records.

11. It is further averred in the plaint that the defendants' properties are adjoining the plaintiff's properties and 17 cents in S.No.173/2 was allotted to Krishnasamy Gouder under partition deed dated 31.12.1959 and that after the demise of Krishnasamy Gouder, the properties in S. No.173/1F, measuring 16 cents and in S.No.173/2B, measuring 17 cents, were allotted to the plaintiff's grandfather, Venkatachala Gouder and 2nd and 3rd defendants' grandfather, Kannappa Gouder jointly. It is further



contended by the plaintiff that there was an oral partition between Venkatachala Gouder and Kannappa Gouder and properties in 173/1F were allotted to the plaintiff's father. It is also the contention of the plaintiff that the defendants on their failure in illegal attempts to acquire the property in SF. No.173/1F, started disturbing the plaintiff's possession and enjoyment of the lands in SF.No.173/2A, by falsely claiming that there exists a way in the suit property. It is specifically averred in the plaint that as per the partition deed dated 31.12.1959, there was no cart track running through the suit property belonging to the plaintiff.

12. The Trial Court on interpretation of the partition deed dated 31.12.1959 came to a conclusion that the cart track was not lying inside the property of the plaintiff, but only in the property allotted to Krishnasamy Gouder viz., 17 cents and 173/2B and proceeded to grant an interim injunction in favour of the plaintiff. However on Appeal, the First Appellate Court reversed the findings of the Trial Court finding that the partition deed clearly mentioned about a right of pathway being recognized in the property of the Venkatachala Gouder on the southern side, west facing and dismissed the injunction Application.

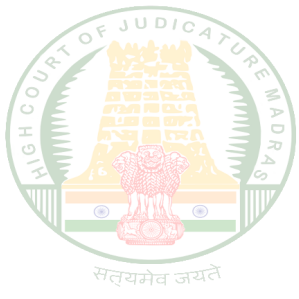


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13. The First Appellate Court also held that the questions whether there is no pathway inside the plaintiff's property and that which are the survey numbers that are covered by the pathway are all issues to be decided in the suit. Prima facie, finding that there was a common pathway set apart for the benefit of Krishnasamy Gouder's legal heirs, proceeded to hold the petitioner was not entitled to an interim injunction. At the time of deciding an Application under Order XXXIX Rule 1 and 2 CPC, the Courts are not expected to conduct a roving enquiry as to the entitlement of the parties, seeking injunction.

14. The Court has to be guided by three principles namely, prima facie case being made out, irreparable loss and hardship that may be caused if an interim order is not granted and balance of convenience. Prima facie, I am satisfied that the First Appellate Court has rightly found that the defendants have a right of pathway as mentioned in the partition deed dated 31.12.1959. The relevant passage interpreting Ex.P1, partition deed is extracted hereunder.

'12.13 ம.சா.ஆ.1ஐ பரிசீலனை செய்கையில் மேற்படி ஆவணத்தில் கிருஷ்ணசாமிகவுடரும், அவரது நான்கு மகன்களும் தாவா சொத்தையும் பிற சொத்துக்களையும் பிரித்துக்கொண்டுள்ளபோது ஒவ்வொருவர் நிலத்திற்கும் வீடுகளுக்கும் பொதுவாக பாதை ஒதுக்கி பிரித்துக்கொண்டுள்ளார்கள் என்பது தெரியவருகிறது. க.ச.173/1ல் அந்த ஆவணத்தில் கண்ட 2ம்



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இலக்கமிட்டவரான கண்ணப்பகவுடர் பாக பூமியில் கிழகோட்டில் தென்வடலாய் 173/2 நெ.காலையில் 1வது இலக்கமிட்டவரான கிருஷ்ணசாமிகவுடர் பாகத்தில் ஒதுக்கப்பட்ட 17 சென்ட் பூமி வரை வந்து அதிலிருந்து அதன் தொடர்ச்சியாக 173/1 நெ.காலையில் அந்த ஆவணத்தில் 3ம் இலக்கமிட்டவரான வெங்கடாசலகவுடர் பாக பூமி வரை வந்து அதிலிருந்து மேற்படி 3ம் இலக்கமிட்டவர் பாகபூமியில் தென்கோட்டில் கிழமேலாகவும், அதிலிருந்து அதன் தொடர்ச்சியாக 173/1 நெ.காலையில் 4, 5 இலக்கமிட்டவரின் பாக பூமி வழியாக சென்று புறம்போக்கு வண்டித்தடம் வரையிலும் கால்நடை வகையராக்களை ஓட்டி நடந்துகொள்ள வேண்டியது என சொல்லப்பட்டுள்ளது. இவ்வாறாக மேற்படி ஆவணத்தில் 3ம் இலக்கமிட்டவரான மனுதாரரின் உரிமைமூல முன்னவரான வெங்கடாச்சலகவுடர் பாகத்தில் புல எண் 173/1ல் தென்கோட்டில் பாதை உரிமை கொடுக்கப்பட்டு அதன் தொடர்ச்சியாக பழனிச்சாமிகவுடர் பாகத்திலும், ரத்தினசாமிகவுடர் பாக சொத்திலும் பாதை உரிமை கொடுக்கப்பட்டுள்ளது. மேலும் புல எண்.173/2, 173/3 காலையிலும் தென்கோட்டில் கிழமேலாக உள்ள மாமூல் வண்டித்தடத்தில் இருந்து 3வது இலக்கமிட்டவரான வெங்கடாச்சலகவுடருக்கு ஒதுக்கப்பட்ட 173/2 நெ.காலையில் தென்கோட்டில் பாதை உரிமை கொடுக்கப்பட்டுள்ளது'

15. On a reading of the above Clause, it is clear that passage has been marked in S.No.173/2 meaning 17 cents, belonging to Krishnasamy Gouder and that further from there, it continues into S.No.173/1 upto the property of Venkatachala Gouder and from there on the southern side, running East West, the passage runs through the property of parties 4 and 5. Further, the Clause specifically mentions that the plaintiff's predecessor's Venkatachala Gouder's land comprised in S.No.173/1 includes the pathway right conferred and is also covering Venkatachala Gouder lands in S.No.173/1. Venkatachala Gouder is the predecessor in interest of the plaintiff. Further, it is also mentioned that even in



S.No.173/2 and 173/3 on the southern side there is a cart track running East to West to property in S.No.173/2, southern side, which is allotted to Venkatachala Gouder. I have also gone through the rough sketch in Ex.R2. It is seen that the only access available to lands in S.F. No.173/1E which belongs to the respondent is from the pathway which is shown in grey colour in S.No.173/2, lying in between S.No.173/2A and 173/B.

16. From a reading of the extracted Clause in the partition deed, it is clear that the pathway right is also covering the lands in S.No.173/2A and not merely, 173/2B. It is the specific contention of the respondent that it is their only access to reach their lands in S.No.173/1E. In view of the interpretation of the Clauses of the partition deed, it entitles the respondents to a pathway right on the southern side of the property of the plaintiff. Therefore, plaintiff has not been able to show that the suit property belongs to the plaintiff absolutely. The balance of convenience is also only in favour of the refusal of the grant of interim order, since the respondent would be deprived of her right to ingress and egress the property comprising in S.No.173/1E, if an interim injunction is granted as prayed for.



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17. The plaintiff has also not shown any irreparable loss and hardship that would be caused, if an interim injunction is not granted also. As seen from the photographs, after the order of the Trial Court, granting injunction on 12.12.2022 alone, the plaintiff has hurriedly proceeded to put up concrete pillar stones and fence the property. The photographs that have been taken are dated 14.12.2022, immediately after the grant of interim order by the Trial Court. Under such circumstances, it is clear that, only taking advantage of the interim order, the plaintiff has chosen to fence the property, thereby blocking entry that was available till such point of time to the respondents/defendants.

18. In the light of the above, I am not inclined to interfere with the order of the First Appellate Court. It shall be open to the parties to lead evidence and establish their respective contentions during trial of the Court. Considering that the suit is only for bare injunction, direction is issued to the Trial Court to dispose of the suit within a period of three (3) months from the date of receipt of the copy of the order. The plaintiff shall restore status quo ante, that is the position as it stood on the date of the interim order being granted in I.A. No.2 of 2022 on 12.12.2022 and restore the pathway as it stood earlier subject to final outcome of the suit.



The Trial Court shall dispose of the suit, on merits and in accordance with law, without being prejudiced by any of the observations that may have been made herein above since the discussion on facts was only for the purpose of deciding the Interlocutory Application.

19. In fine, this Civil Revision is dismissed. Consequently, connected Miscellaneous Petitions are also dismissed. No costs.

01.08.2025

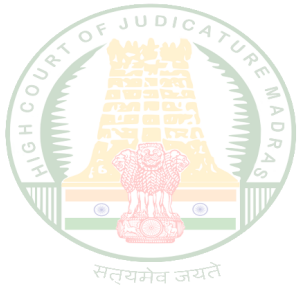
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To:

1. The II Additional Sub Judge,
II Additional Sub Court, Coimbatore.
2. The District Munsif, Coimbatore.



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P.B.BALAJI, J.,

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Pre-delivery order in
CRP. PD. No.1827 of 2024
and CMP. Nos.9659 & 9657 of 2024

01.08.2025