



O.A.No.39 of 2022 in
C.S.No.21 of 2022

RESERVED ON	21.03.2022
PRONOUNCED ON	27.04.2022

O.A.No.39 of 2022 in
C.S.No.21 of 2022

P.VELMURUGAN, J.

In the suit filed for declaration, permanent injunction and damages, the applicants have filed this application seeking interim injunction restraining the respondents, their men, agents, executors, administrators and any other person or persons claiming through or under the respondents from interfering the right of access to the applicants in the suit property more fully described in the schedule herein and earmarked in green colour in the sketch annexed hereto pending disposal of the above suit.

2. According to the applicants/plaintiffs in the year 1947 their predecessor-in-title one Kamalam Rajagopalan purchased 11 grounds and 43 sq.ft from T.R.Srinivasachari and thereafter, divided the western portion measuring 11 grounds into four plots and the subject matter of the suit is southern portion of Plot 'D'. Further, the applicants/plaintiffs



O.A.No.39 of 2022 in
C.S.No.21 of 2022

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purchased their respective portions under two separate Sale Deeds dated 27.09.2021 registered as Document Nos.3138 of 2021 and 3139 of 2021, respectively. Further, the suit property is a common pathway. According to them, the third respondent, who is the owner of Plot 'A' is claiming exclusive right over the common passage and prevented the applicants from using the common pathway. Further, the common passage is the only one access for the property owned by the applicants 1 and 2 from St.Mary's Road. Even their predecessors were enjoying the common passage ever since their purchase in the year 1972 by a Sale deed dated 27.03.1972 registered as Document No.539 of 1972.

3.It is further stated that the applicants purchased the property in the year 2021 and thereafter, they demolished the existing building and going to construct a new building in the said property. Since the respondents caused hindrance to the applicants from accessing the common passage, to restrain the respondents from interfering the right of access to the applicants in the suit property, the applicants are before this Court.



O.A.No.39 of 2022 in
C.S.No.21 of 2022

WEB COPY

4.The 1st respondent has filed a counter affidavit on behalf of the 3rd respondent/M/s.Pioneer Engineering Corporation denying the allegations of the applicants stating that admittedly there is a passage from St.Mary's Road leading to the property of the respondents 1 and 3, which is a private Road/passage. The 3rd respondent/M/s.Pioneer Engineering Corporation has title and interest over the suit property from the year 1985 to till date. It is further stated that the applicants/plaintiffs or their predecessor-in-interest never had any access through the private Road/passage as co-owner, however, now the applicants pleaded that they were enjoying the passage to have ingress and egress to the property. To substantiate the same, the applicants never produced any evidence or documents. The applicants and their predecessors only using the passage situated at No.201, St.Mary's Road, running North to South from St.Mary's Road on the Western side of the property, but, not the private passage/Road. It is further stated that the applicants purchased the property in the year 2021 and Sale Deeds show that the suit property is a private Road. The applicants have not claimed any easementary rights over the suit property. Further, the applicants by fabricating the false documents, have got planning permission and building permission from



O.A.No.39 of 2022 in
C.S.No.21 of 2022

WEB COPY

the concerned authorities and they are attempting to put up construction illegally in the respondents' property. The applicants have not approached this Court with clean hands. Hence, interim injunction granted by this Court on 03.02.2022 is liable to be vacated, since it would cause untold prejudice, inconvenience and irreparable loss to the respondents.

5.Mr.Satish Parasaran, learned Senior counsel appearing for the applicants/plaintiffs would submit that the suit schedule property is a common pathway. Originally, the suit property and adjacent properties consisting to an extent of 11 grounds 43 sq.ft are belonged to one T.R.Srinivasachari. In the year 1947, Kamalam Rajagopalan purchased the said property, through a registered Sale Deed dated 27.10.1947, in Document No.1172 of 1947. Ever since, she is in absolute possession and enjoyment of the said property. Thereafter, she divided the Western portion 11 grounds into four plots along with 16 feet wide North South common passage and obtained approval from the then Corporation of Madras. Despite the best of efforts neither the applicants nor their predecessors able to trace a copy of the said approval. Thereafter, Kamalam Rajagopalan through her power agent R.Srinivasan sold Plot



O.A.No.39 of 2022 in
C.S.No.21 of 2022

WEB COPY

'D' along with right of way in the suit property with entry from St.Mary's Road to K.Selvaraj S/o.Krishnaswamy Mudaliar and S.Rajan S/o.Souri Muthu Pillai vide two Sale Deeds dated 27.03.1972 registered as Doc.No.539 of 1972. Subsequently, S.Rajan settled his half undivided share of the entire property including the right of way in the suit property in favour of Anand Babu S/o.C.K.Nagesh vide Settlement Deed dated 17.10.1979. Thus, Southern half share of Plot 'D' was allotted to K.Selvaraj and Northern half share of Plot 'D' was allotted to Anand Babu. The said K.Selvaraj, leased out his property to Mohammed Rameez by virtue of Lease Deeds dated 10.06.1989 and 04.04.1990 and thereafter, Mohammed Rameez constructed a residential building in the said land. Then, Southern half share of Plot 'D' (land and building) was sold in favour of Meena R.Sampath; M.Soundarajan ; and Praveen in the ratio of 40:30:30. Subsequently, they sold the land along with the residential building to one Ramesh Khandelwal vide registered Sale Deed dated 13.02.2019 registered as Document No.532 of 2019. In the year 2021, the said Ramesh Khandelwal sold the Northern portion of Plot 'D' to the 1st applicant and the Southern portion of the said property



O.A.No.39 of 2022 in
C.S.No.21 of 2022

WEB COPY

to the 2nd applicant. Hence, the applicants are *bona fide* purchasers of their respective portions with right of way in the suit property.

6.The learned Senior Counsel would further submit that the applicants' predecessor-in-interest were enjoying the common passage ever since their purchase in the year 1972. Further, in the rough sketch filed along with the plaint shows that the suit pathway is a common pathway. After purchase of the property in the year 2021, the applicants demolished the existing building in their property and now going to construct a new building, but, the defendants, who are the owners of the adjacent property, preventing them from using the common pathway. He further contended that the suit property is the only access to the applicants' property and the respondents do not have any right to claim the suit property is an exclusive property of the third respondent/Company is unsustainable and untenable in law.

7.He would further submit that on 03.02.2022, after hearing the arguments, this Court found that as the applicants have satisfied the triple test for granting interim injunction viz., *prima facie*, balance of



O.A.No.39 of 2022 in
C.S.No.21 of 2022

WEB COPY

convenience and irreparable injury, granted Ad-Interim Injunction till 17.02.2022. During the pendency of the application, Advocate Commissioner was appointed to note down the physical features of the applicants' property and the gate affixed on the Eastern and Western side of the pathway. In the report, the learned Advocate Commissioner has stated that in 'B' and 'C' plots there were gates on the suit pathway. It is also to be noted that except the suit pathway, there is no access for the property owned by the applicants from St.Mary's Road. Further, the applicants have established the right and title in the suit property, which were in enjoyment of the predecessors of the applicants from 1972 till Sale deed dated 27.09.2021. Since the respondents are restraining the applicants from using the suit pathway, the applicants constrained to file the suit for declaration declaring the suit pathway as common pathway.

8.The learned Senior Counsel would further submit that now after getting approval from authorities concerned, the applicants' demolished the existing building in their property and now going to construct a new building in the said property. At this stage, the respondents troubling the applicants to access the common pathway, which created much hardship



O.A.No.39 of 2022 in
C.S.No.21 of 2022

WEB COPY

to the applicants. Since the applicants established their right over the suit property and now made all arrangements to put up a construction, it is necessary to restrain the respondents from creating hindrance to the applicants from accessing the common pathway and if the respondents are allowed to continue the hindrance, it will cause irreparable loss and injuries to the applicants.

9.The learned counsel for the respondents/defendants would submit that though the original predecessor of the respondents one Kamalam Rajagopal purchased 11 grounds and 43 sq.ft from T.R.Srinivasachari and thereafter, divided the western portion measuring 11 grounds into four plots. Subsequently, she retained 'A' portion in the suit plan annexed in the plaint and sold 'B', 'C' and 'D' suit properties. Further, Plots 'C' and 'D' has direct access from St.Marys Road on the Western Side of the property belonging to C.K.Nagesh and Plot 'B' has access from Eastern side of 'B' property. The respondents' predecessor-in-title retained the suit pathway as an exclusive passage to reach Plot 'A' property. Subsequently, Kamala Rajagopalan sold Plot 'A' including



O.A.No.39 of 2022 in
C.S.No.21 of 2022

private passage, which she retained, in favour of the third respondent

M/s.Pioneer Engineering Corporation vide Sale Deed dated 09.10.1985.

10. The learned counsel for the respondents would further submit that entire suit pathway and adjacent properties belongs to Srinivasachari. The predecessor of the respondents Kamalam Rajagopalan purchased the property in the year 1947 and thereafter, sold Plot 'D' property through her power agent R.Srinivasan to one K.Selvaraj and S.Rajan and the Western side of the private passage with entry from St.Mary's Road. He further submitted that the land bounded on the North by the St. Mary's Road, on the East by the private Road leading to the bungalow of the Kamalam Rajagopalan, on the South by the bungalow belonging to the Kamalam Rajogapalan and on West by a land belonged on one Regini Nagesh, together with the compound wall on the North and with the right of way on the private Road abutting the vacant land on the Eastern side with the obligation as to maintenance and repairs along with the owners of the other plots having such and similar rights therein. Further the said Selvaraj and Rajan were conveyed one composite unit of 3 grounds marked as Plot 'D' with access from St.Mary's Road. Hence, the access to



O.A.No.39 of 2022 in
C.S.No.21 of 2022

WEB COPY

Plot 'D' was only from St.Mary's Road and there was no need to use the said passage, which in fact, belongs to the respondents, either by Selvaraj and Rajan who are the predecessors of the applicants or by the applicants. Further the private passage was never used as a thoroughfare by the applicants' predecessors.

11.The learned counsel would further submit that from 1972 to 1985, Kamalam Rajagopalan rented out the building and passage in Plot 'A' to late Mr.K.Subbiah (Pioneer Engineering Corporation) measuring to an extent of 4 grounds and 315 sq.ft and passage 128 sq.ft long and 16 feet wide (2048 sq.ft). Thereafter, she executed a Sale Deed dated 09.10.1985 in favour of M/s.Pioneer Engineering Corporation/3rd respondent herein in R.S.No.3925/4 along with suit pathway. Therefore, the suit pathway has been conveyed in favour of the 3rd respondent as a private passage. He would further submit that if the suit pathway is a common pathway as claimed by the applicants, the said Kamalam Rajagopalan, predecessor in title of the respondents could not have sold the suit pathway to the 3rd respondent. Therefore, the third respondent is having absolute right and title over the private passage as exclusively



O.A.No.39 of 2022 in
C.S.No.21 of 2022

WEB COPY

shown in the sale deed executed by Kamalam Rajagopalan in favour of the 3rd respondent. The applicants have not denied the title of the Kamalam Rajagopalan, predecessor of the respondents. The sale deed dated 09.10.1985 executed by Kamalam Rajagopalan in favour of the 3rd respondent clearly shows that Kamalam Rajagopalan had no intention to use the suit pathway as a common pathway and it was only exclusively retained as a private passage to reach the 'A' Property and subsequently sold the same to the 3rd respondent along with disputed pathway. Hence, it is proved that the suit pathway is an exclusive pathway to the 3rd respondent. The applicants have not made out any *prima facie* case proving that the disputed pathway is a common pathway. Therefore, it is clearly proved that the applicants have no title or interest over the suit pathway as a common pathway.

12.This Court by an order dated 17.02.2022 appointed the Advocate Commissioner to inspect the physical features of the suit premises. On inspection the respondents 1 and 3 have pointed out that drainage and cable pipe lines are indwelled in the western side of the applicants property and not in the suit pathway, which clearly shows that



O.A.No.39 of 2022 in
C.S.No.21 of 2022

the only access to the Plot 'D' is from St.Mary's Road and hence, there is no necessity to use the suit pathway as a common pathway at any point of time. The predecessor of the respondents Kamalam Rajagopalan retained the pathway as a common pathway, which is used as an exclusive pathway of their 'A' property shown in the plaint. The applicants have wrongly shown the suit property as a common passage and filed the present suit only to defeat the right of the respondents and to create new right over the suit pathway. Therefore, there is no *prima facie* case, balance of convenience is in favour of the respondents and if interim injunction is granted, irreparable injuries would be caused to the respondents and hence, prays for dismissal of the application.

13.Heard the learned Senior Counsel for the applicants, the learned counsel for the respondents and the learned Advocate Commissioner and also perused the materials available on record.

14.Admittedly, the applicants filed the suit for declaration declaring the suit pathway as a common pathway. Both the parties are tracing title from Kamalam Rajagopalan. According to the applicants, in



O.A.No.39 of 2022 in
C.S.No.21 of 2022

the year 1972 their predecessors-in-title one Selvaraj and Rajan purchased Plot 'D' property and even in that sale deed the suit pathway was shown as a common passage. The predecessors of the applicants have purchased the property and divided into two portions and sold the Southern portion of Plot 'D' property in favour of the applicants and therefore, the applicants have got right and title to use the said property as common passage.

15.The main contention of the learned Senior counsel appearing for the applicants is that the applicants' and their predecessors-in-interest were enjoying the suit pathway as a common passage ever since their purchase from 1972 to till 2021. Further, in the rough sketch filed along with the plaint shows that the suit pathway is a common pathway. However, now the respondents are preventing the applicants from using the common pathway.

16.Per contra, the learned counsel for the respondents contended that the sale deed executed by Kamalam Rajagopalan through her power agent in favour of Selvaraj and Rajan by Sale Deed dated 27.02.1972 and



O.A.No.39 of 2022 in
C.S.No.21 of 2022

in the said Sale Deed Selvaraj and Rajan were conveyed only 3 grounds marked as Plot 'D' with access from St.Mary's Road and there was no need or necessity for access through the suit pathway leading to the respondents' 1 and 3 bungalow.

17. Admittedly, Kamalam Rajagopalan, initially rented out Plot 'A' property along with suit property to the 3rd respondent and subsequently, sold the same vide Sale Deed dated 09.10.1985. Therefore, the third respondent has got every right and title in the suit property neither it is a common pathway nor common passage for plots 'A', 'B', 'C' and 'D' properties. It is only an exclusive property of the third respondent as per Sale Deed dated 09.10.1985, executed by the predecessor of the respondents. Therefore, both the parties admitted that the predecessor-in-title viz., Kamalam Rajagopalan had owned the entire extent of 'A', 'B', 'C' and 'D' and subsequently 'A' property and suit pathway were sold to the 3rd respondent/Company and 'D' property was sold to the applicants' predecessors. The applicants are subsequent purchasers of Plot 'D'; Further the Advocate Commissioner's report also reveals that there was no gate in the suit pathway for 'D' property. Further, at the time of



O.A.No.39 of 2022 in
C.S.No.21 of 2022

WEB COPY

inspection, the existing building in the applicants' property was demolished and the applicants are going to construct a new building in the said property.

18.However, the Sale Deed dated 29.03.1972, executed in favour of the predecessors of the applicants does not show that the suit pathway is a common pathway or a common passage, whereas it is mentioned as private passage. It is pointed out by the learned counsel for the respondents that the applicants' predecessors obtained approval from the Corporation of Madras to sell 11 grounds into four plots along with 16 feet wide North South common passage, but, the applicants have not produced the said approved plan, proving that the suit path way is a common pathway and they have simply stated that despite the best efforts, neither the applicants nor their predecessors-in- title were able to trace out the copy of the approved plan. Unless the plan is produced to prove their claim, it is difficult to accept the case of the applicants that the predecessors of the applicants used the suit pathway as a common pathway to lead to their property.



O.A.No.39 of 2022 in
C.S.No.21 of 2022

WEB COPY

19.It is settled proposition of law that while deciding the application under Order XIV Rule 8 of the Original Side Rules of this Court and Order 39 Rule 1 and 2 of Civil Procedure Code, the Court has to see whether applicants have got *prima facie* case and the balance of convenience is in their favour. If interim injunction is not granted, irreparable injury would be caused to the applicants. On a careful reading of the entire documents and also plan annexed with the plaint, this Court finds that the applicants have not made out *prima facie* case and balance of convenience is in favour of the respondents. Further, it is only an original application, which can be decided only based on the affidavit or otherwise. Whether the suit passage is a common passage or not, can be decided only after trial and not at this stage. Since the applicants have not established *prima facie* case for the relief of interim injunction and if the same is granted, irreparable injuries would be caused to the respondents/defendants.

20.The applicants filed the suit for the relief of declaration declaring the suit pathway is a common pathway. The right over the suit property can be decided only after trial. Now, the question is as to whether the applicants have made out *prima facie* case for grant of



O.A.No.39 of 2022 in
C.S.No.21 of 2022

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interim injunction as prayed for in the application, or not. As observed above, the applicants have not made out any *prima facie* case proving that the suit pathway is a common pathway to reach their property and unless the same is proved, the applicants are not entitled to get the relief of interim injunction, especially when the respondents have established that applicants' properties within the plot 'D' property and the 'D' property has access through St.Mary's Road and while dividing 'D' property into several portions, they have to have their access within the property from St.Mary's Road and not from the suit pathway. Admittedly there was an approved plan as mentioned in the affidavit, the same has not been produced. Unless they establish that suit pathway is a common pathway to 'A' and 'D' properties the applicants are not entitled to get relief of interim injunction.

21. In view of the above, the earlier order of Ad-interim injunction granted by this Court on 03.02.2022 is hereby set aside and the application in O.A.No.39 of 2022 is dismissed. No costs.

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27.04.2022

Note: Issue Order copy on 27.04.2022



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O.A.No.39 of 2022 in
C.S.No.21 of 2022

P.VELMURUGAN, J.

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O.A.No.39 of 2022
in
C.S.No.21 of 2022

27.04.2022