

I.A.No. 2/2023
and
I.A.No. 3/2023
in
O.S. No.163/2023

Common Order

Dated :14.06.2023

Order 39 Rule 1 & 2 of CPC

Heard. Records perused. The averments made in the plaint and documents filed thereon perused. The learned counsel for the petitioner/plaintiff contented that the suit properties were originally belongs to one Sakthivel by virtue of partition deed dated 14.12.1973. Copy of the Partition Deed is produced as plaint Doc. No.1. The above said Sakthivel was in possession and enjoyment of the said property from the date of partition. The above said Sakthivel had a wife namely Amsaveni. The above said Sakthivel and Amsaveni had a male child namely Easwarasamy. The said male child Easwarasamy died thereafter. The petitioner/plaintiff is the daughter of Manonmani, who is none other then Sister of the said Sakthivel and

Shanmugavelu. The above said Sakthivel also died on 29.06.2018. Copy of the Death certificate of Amsaveni and Sakthivel are produced as plaint Doc. No.9 and 10.

The petitioner/plaintiff's husband had some other properties near to the suit properties and some dispute arose between the above said Sakthivel and petitioner/plaintiff's husband. The above said Sakthivel had filed a suit before this court in O.S.No.411/2016 for the relief of declaration and permanent injunction against the present petitioner/plaintiff and her husband. The above said Sakthivel was not having any issues the dispute between the petitioner/plaintiff and Sakthivel was settled and compromise decree was passed in O.S.No.411/2016. Copy of the registered Compromise decree is produced as plaint Doc.No.2. As per the Compromise decree the suit properties were allotted to share of the petitioner/plaintiff and the said Sakthivel had relinquished all his

rights over the suit property. As per the Compromise decree the suit properties have been put into possession of the petitioner/plaintiff. The petitioner/plaintiff has been in peaceful possession and enjoyment of the suit properties as an absolute owner.

The petitioner/ plaintiff counsel contended that the respondent/defendant claims to be the son of the above said Sakthivel and he is not at all son of the deceased Sakthivel and Amsaveni. The said Amsaveni pre-deceased to Sakthivel. The said Sakthivel had some other properties and the respondent/defendant had transferred some other properties from the deceased Sakthivel by playing fraud.

The respondent/defendant had filed a suit before this court in O.S.No.112/2021 for the relief of permanent injunction in respect of the suit properties against the petitioner/plaintiff and her husband as if he got a settlement deed from the deceased Sakthivel in respect of the suit property. Copy of the settlement deed obtained by the

respondent/defendant is produced as plaint Doc No.3. After passing of the Compromise decree in O.S.No.411/2016 the deceased Sakthivel had no right or interest over the suit property. The respondent/defendant suppressed the earlier suit proceedings and obtained an ad-interim injunction in O.S.No.112/2021. Copy of the plaint and written statement in O.S.No.112/2021 are produced as plaint Doc. No.5 and 6. Affidavit, petition and Counter in I.A.No.7/2023 in O.S.No.112/2021 are produced as Plaint Doc. No.7 and 8. The suit filed by the respondent/defendant is being contested by the petitioner/plaintiff and her husband. Now the respondent/defendant is attempted to enter into the suit property unlawfully moreover the respondent/defendant is trying to alienate suit property to the 3rd parties to deprive the right of the petitioner/plaintiff and also trying to disturb the petitioner/ plaintiff's peaceful possession and enjoyment of the suit property. The respondent/defendant have no right to enter into the suit property and also have no right to alienate the suit property.

The petitioner/plaintiff is produced the plaint Doc.No.1 to 10 shows that the petitioner/plaintiff have title and possession over the suit properties.

Therefore, this court is of opinion that the prima facie case has been made out and balance of convenience is also in favour of the petitioner/plaintiff. If the ad-interim injunction will not be granted to the petitioner/plaintiff. The petitioner/plaintiff will be suffered lot.

Hence, this court is inclined to grant an order of ad-interim injunction restraining the respondent/defendant and his men, agents from in anyway not to disturb the petitioner/plaintiff peaceful possession enjoyment over the suit property and also restraining the respondent/defendant in any way creating any encumbrance or alienating in respect of the suit property till 30.06.2023.

The petitioner/plaintiff should be complied the Order 39 Rule 3(a) & (b) of CPC.

Issue notice to respondent/defendant by 30.06.2023

PDM., POLLACHI,
PDM, CBE. I/C.,