

IN THE COURT OF THE ADDITIONAL DISTRICT MUNSIF OF POLLACHI

PRESENT: THIRU.N.BHARATHIRAJAN, B.A., B.L.,

ADDITIONAL DISTRICT MUNSIF, POLLACHI.

FRIDAY THE 24th DAY OF JUNE 2022

I.A.No.2/2021 inO.S.No.276/2018

R.Natarajan
Rep. by his power agents
1) K.Kalaipalaniappan
2) R.Sekar

... Petitioners/Plaintiffs

/VS/

The Commissioner,
Pollachi Municipality.

... Respondent/Defendant

This petition coming on 17.06.2022 for final hearing before me in the presence of Thiru. M.A.Kanagaraj, Advocate for Petitioner/Plaintiff and Thiru. T.Marutharaj, Advocate for Respondent/Defendant and upon hearing the submissions of the Learned counsels and on perusal of all material on record, this Court delivered the following:

ORDER

Petition is filed under Order XXXIX Rules 1 and 2 Read With Section 151 of CPC to grant an order of ad-interim injunction restraining the respondents and their men, agents, officials, subordinates and any persons claiming right through them in any way connecting the illegal underground pipe line with any of the main underground drainage system pipe line which starts from Palakkad Road, pending disposal of the suit.

2. GIST OF AVERMENTS IN AFFIDAVIT:

The petitioner herein is the plaintiff in the above suit. The petitioner filed the above suit against the respondent for mandatory injunction and Permanent injunction. The petitioner submits that the property measuring an extent of 1.48 acres in T.S.No.101 Ward 4 Block 6 was originally belonged to V.A.Palanisamy. The said V.A.Palanisamy sold the properties measuring an extent of 1.48 acres to K.S.Abdul Kareem and then K.S.Abdul Kareem sold his portion of property measuring an extent of 0.11 1/2 cents to one Abdul Kareem Rowther. The said K.S.Abdul Kareem and Abdul Kareem Rowther had jointly sold their properties measuring an extent of 1.18 acres in T.S.No.101/1 to the petitioner wide sale Sale deed dated 15.07.1996.

The petitioner has appointed Mr.Kalaipalaniappan and Sekar as his Power Agents under register power of Attorney deeds dated:05.07.2012 in respect of portion of his property in survey no.101/1 measuring an extent of 0.66 1/2 cents. The petitioner is running a petrol Bunk in the remaining portion of his land and he enjoying the property by mutating the revenue records in his name. On 14.07.2018 and 15.07.2018 the respondent trespassed into the petitioner property and dug four pits with measurement of 6 feet deep and 4 1/2 breath and 270 feet length channel and laid underground pipeline in the suit properties. The suit property is absolute property of the petitioner and the respondent has no right and interest. Eventhen, the respondent taking law in his hands was illegally trespassed into the suit property and laid pipeline to link the underground drainage system. The respondent without issuing any notice to the petitioner trespassed into the suit property and done the aforesaid illegal activities and by which the respondent damaged the petitioner property and thereby the petitioner incurred huge lose. There is no 10 feet pathway exists. Hence, the petitioner approach this court for temporary injunction.

3. GIST OF AVERMENTS IN ADOPTED WRITTEN STATEMENT AS COUNTER :

The respondent deny the all averments stated in the petition. There is a kuttai in S.No.101/2 old S.F.No.2433 and to access said kuttai property a 10 feet breath pathway situated on the Western side of suit A schedule property which starts from Palakkad Road and reaches kuttai. The said pathway is under the possession and the enjoyment of the respondent. The respondent for forming underground drainage system has laid the pipe line in the said 10 feet pathway to connect the kuttai. The forming of underground sewage system in pollachi town is a public project and for that project Government has allotted a huge sum of Rs.110 Crores. Earlier, the petitioner has filed a suit in OS No.467/2016 and the same is pending before this court. But, the petitioner filed the suit by suppressing the particulars of earlier suit. After filing the suit in OS 467/2016 the petitioner made many changes in the pathway. Further, the respondent is about to complete the underground sewage system but, due to hurdles and obstructions made by the petitioner, he is unable to complete the project. Therefore, the petition is liable to the dismiss.

4. POINTS FOR CONSIDERATION:

1. Whether the petition is to be allowed or not ?

5. DISCUSSION AND DECISION :

5.1. The learned counsel for the Petitioner/ Plaintiff contended that the petitioner purchased the suit property measuring an extent of 1.18 acres in T.S.No.101/1 to the petitioner wide sale Sale deed dated 15.07.1996. The petitioner is running a petrol Bunk in the portion of his land and he has appointed Mr.Kalaipalaniappan and Sekar as his Power Agents under register power of Attorney deeds dated:05.07.2012 in respect of remaining property in survey no.101/1 measuring an extent of 0.66 1/2 cents. Eversince, From the date of purchase the petitioner is enjoying the property by mutating the revenue records in his name. On 14.07.2018 and 15.07.2018 the respondent trespassed into the petitioner property illegally and dug four pits with measurement of 6 feet deep, 4 1/2 breath and 270 feet length channel and laid underground pipeline in the suit B schedule property. Hence, the petitioner approach this court for temporary injunction.

5.2. The learned counsel for the Respondents/Defendants contended that there is a kuttai in S.No.101/2 old S.F.No.2433 and to access the kuttai a 10 feet breath pathway is situated on the Western side of suit A schedule property which starts from Palakkad Road and reaches kuttai. The said pathway is under the possession and the enjoyment of the respondent. The respondent for forming underground drainage system has laid the pipe line in the said 10 feet pathway to connect the kuttai. The petitioner filed the suit by suppressing the particulars of earlier suit in OS No.467/2016. Further, respondent contend that the respondent is about to complete the underground sewage system but, due to hurdles and obstructions made by the petitioner, he is unable to complete the project. Therefore, the petition is liable to the dismiss.

5.3. Heard both sides. Record perused. The Petitioner/Plaintiff filed the suit against the Respondent/Defendant seeking the relief of mandatory injunction and Permanent injunction and other reliefs. The Petitioner claims that he is the absolute owner of the suit schedule property and in support of his claim he has filed the certified copy of Sale deed dated 15.07.1996. On perusal of sale deed it is learned that the plaintiff has purchased 1.18 acres in S.No.101/1. Further, the petitioner claims that is running a Petrol Bunk in his portion of property and he has executed a Power of Attorney deeds in the name of 2nd and 3rd petitioners pertaining to his remaining property. The Petitioner had filed the Power of

Attorney deeds, Extract of Adangal register and Property tax receipts regarding the Petrol Bunk. Further the respondent also did not make any objection regarding the petitioners title and enjoyment over the suit schedule property. The respondent content that he laid underground sewage pipe line in the 10 feet pathway which is under the possession of the respondent. In the suit an advocate commissioner is appointed to inspect and note down the physical features of the suit schedule property. Accordingly, the advocate commissioner inspected and surveyed the suit schedule property with the aid of pollachi Municipal surveyor after giving notice to the parties and has filed his report along with plan. At this juncture this court decides that it would be appropriated to refer the relevant para in the commissioner report is as follows:-

"தாவா 'B' ஷெட்யூல் சொத்தின் மத்தியப் பகுதியில் சுமார் 4 அடி ஆழத்தில் இரண்டு நிலத்தடிப் பைப் லைன்கள் வடக்கே இருந்து தெற்கே தாவா 'B' ஷெட்யூல் சொத்தின் முக்கால் பகுதிக்கும் அதிகமான பகுதியில் அமைந்திருந்தன. அந்த இரண்டு பைப் லைன்களில் ஒன்று சிமெண்ட் பைப் லைன் மற்றொன்று Stone Wear Pipe ஆகும். அந்த பைப் லைன்கள் முடியும் தென்புற பகுதியில் இருந்து சுமார் 4 அடி ஆழத்தில் 'B' ஷெட்யூல் சொத்து தென்புற எல்லை வரை குழி தோண்டப்பட்டிருந்தது. மேற்படி நிலத்தடி சிமெண்ட் பைப் லைனில் வடபுறம் மற்றும் தென்புறம் இரண்டு கான்கிரீட் குழிகள் திறப்புடன் (Manuals) காணப்பட்டது."

From perusal of the above Commissioner report coupled with the plan it prima faice shows that the respondent has laid pipeline in suit B schedule property to connect the underground drainage to the said kuttai. Further, from perusal of records the respondent did not produce any single document to show that the 10 feet pathway is under his title and possession. Therefore this court decides that the respondent without any right had laid pipeline through the suit B schedule property. The petitioner states that If the interim injunction is not granted the respondent will continue his unlawful work in the suit B schedule property and thereby the petitioner will incur heavy loss which is not even compensated by any means. From discussed above this court concluded that the balance of convenience is in favour of the petitioner/ plaintiff. Therefore this court inclined to allow the petition.

6. RESULT:

In the result, this petition is allowed and granted ad-interim injunction restraining the respondents and their men, agents, officials, subordinates and any persons claiming right through them in any way connecting the illegal underground pipe line with any of the main underground drainage system pipe line which starts from Palakkad Road, pending disposal of the suit.

Dictated to the steno-typist, typed by her in the Computer directly, printed, corrected and pronounced by me in open court this the 24th day of June 2022.

Sd/- (N.Bharathirajan)
Additional District Munsif ,
Pollachi.

List of witness and documents for Both side: - Nil -

Sd/- (N.Bharathirajan)
Additional District Munsif,
Pollachi