

IN THE COURT OF THE DISTRICT MUNSIF, SULUR.Present : **Tmt.N.Renuga**, B.A., B.L.,

District Munsif, Sulur

Friday, the 25th day of April 2025**I.A.No.5/2025****in****O.S.No.44/2025**Sivakumar ...Petitioner / 2nd respondent/ 2nd defendant

/ Vs /

Vidhyasankari ...Respondent/ petitioner/ plaintiff

This petition is coming on 24.04.2025 for final hearing before me in the presence of Mr.P.P.Suresh Kumar, Advocate for the Petitioner and MrK.Karthikaivelan, Advocate for the Respondent and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

ORDER

Petition filed by the petitioner under Order 39 rule 4 and section 151 of CPC to set aside and vacate the ad interim injunction granted in I.A.No.2/2025 on 09.04.2025.

1. The brief averments of the petition affidavit filed by the petitioner as follows:-

1.1. The petitioner/ 2nd defendant have created sham and nominal deed in favour of the 1st defendant for bank and loan purpose to help him. But the 1st defendant cheated the petitioner/ 2nd defendant and got sale deed in respect of suit property for produce before the bank and also promised to conveyed the property to petitioner/ 2nd defendant after discharge of the loan. Since the 1st defendant was close friend to petitioner/ 2nd defendant the petitioner/ 2nd defendant believed him

and executed deed in favour of the 1st defendant only on promise to reconvey the same to petitioner/ 2nd defendant.

1.2. After the said documents, still the petitioner/ 2nd defendant in continuous possession and enjoyment of the suit properties and the petitioner/ 2nd defendant have leased out the suit houses to one Mani who is the petitioner/ 2nd defendant's father in law and also to college students and one Saravana Kumar and they are in physical possession and enjoyment of the suit properties and the petitioner/ 2nd defendant receiving rent all these days. But recently the attitude of the 1st defendant was changed and acting adverse to petitioner/ 2nd defendant. Hence, the petitioner/ 2nd defendant filed suit against the 1st defendant for permanent injunction restraining him from interfering with petitioner/ 2nd defendant's peaceful possession and enjoyment into appearance and the same is posted for filing of counter and written statement.

1.3. After the suit, the 1st defendant created sham and nominal sale deed in favour of the respondent/ plaintiff by suppression of truths and the 1st defendant is actual petitioner/ plaintiff in this case. Since the suit property is in petitioner/ 2nd defendant lawful possession and enjoyment, the 1st defendant created sham and nominal sale deed in favour of the respondent/ plaintiff without possession of the suit property and field this false and vexatious suit through respondent/ plaintiff and got an order of ad interim injunction.

1.4. Actually the injunction order the respondent/ plaintiff and 1st defendant influenced the Sulur Police and threatened the tenants in the suit property and the Sulur Police also unlawfully illegally acted and threatened the tenant Mani who is father in law of petitioner/ 2nd defendant to vacate and the Sulur Police took them to station and illegally hold them in custody in the station by unlawful manner and illegal detention. With the help of the police the respondent/ plaintiff and 1st defendant threatened the Mani, college students and got signature as they are tenant under the respondent/ plaintiff and 1st defendant. The tenant said Mani also prepare

complaint against the Sulur Police and all and by misusing the ad interim injunction, the tenant Mani has been evicted by force by Police and the respondent by unlawful manner.

1.5. Now by order of this court the petitioner/ 2nd defendant sustained lot of injury by the unlawful acts of the respondent/ plaintiff and 1st defendant. The respondent/plaintiff also failed to comply the order of this court as mandate under order 39 rule 3. The respondent/ plaintiff has not sent plaint documents which relied for obtained exparte injunction. Hence, the order is liable to set aside and vacated one unless the petitioner/ 2nd defendant will be put to irreparable loss and much hardship. Hence, the petition is to be allowed.

2. The brief avernments of Counter statement filed by the respondent as follows:-

2.1. The 1st defendant purchase the suit property on 22.01.2014 from the petitioner/2nd defendant through doc.No.459/2014. The said property was offered for sale through the petitioner/2nd defendant and the respondent/plaintiff had negotiation with the 1st defendant through petitioner/2nd defendant to purchase the suit property and agreed to purchase the property for Rs.83,50,000/- and on 22.07.2022 the respondent/plaintiff have given Rs.20,00,000/- as advance money to the 1st defendant at the office of petitioner/ 2nd defendant. The 1st defendant executed sale agreement on 13.10.2022 again the 1st defendant received Rs.5,00,000/- additional advance on 04.11.2022.

2.2. Further the respondent/plaintiff have demanded for execution of sale deed, the 1st defendant stated that in the name of Aravind Traders the 1st defendant have obtained loan amount from South Indian Bank, Ganapathy Branch in Account No.0370083000000309 have deposited the title deeds and it has not been get back by the 1st defendant. Further the Bank issued sale notice on 21.02.2025 upon the suit property. The 1st defendant sated that he could not pay the loan amount of Rs.95,00,000/- to the Bank and he could not execute the sale deed in favour of the

respondent/plaintiff. Again the respondent/plaintiff and her husband had negotiation with the 1st defendant and executed one compromise deed on 25.02.2025 and as per the agreement the respondent/plaintiff have to pay the total amount of Rs.95,00,000/- to the South Indian Bank and after getting the sale deed from the Bank, the 1st defendant agreed to execute sale deed in favour of respondent/ plaintiff and after executing the sale deed the 1st defendant agreed to return the excess amount of Rs.36,00,000/- which was paid by the respondent/plaintiff for discharging the loan of the 1st defendant.

2.3. After that, the 1st defendant give consent letter to the South Indian Bank on 20.02.2025 in the name of Aravind Traders by stating his willingness to pay Rs.95,00,000/- and discharge the loan amount. Accordingly the respondent/ plaintiff issued cheque No.181528 to the South Indian Bank for Rs.95,00,000/- to discharge the loan amount of Aravind Traders. The 1st defendant have deposited the cheque on the same day itself, the cheque was honoured, after that the respondent/ plaintiff and 1st defendant have received title deeds from the South Indian Bank and on 27.02.2025 the 1st defendant executed sale deed infavour of the respondent/ plaintiff in doc.No.3272/2025. From the day the respondent/ plaintiff is in possession and enjoyment of the suit property. After that on 28.03.2025 the 1st and 2nd defendants have making continuous disturbance to the respondent/ plaintiff in enjoying the suit property by asking more money from the respondent/ plaintiff. The respondent/ plaintiff have lodged complaint from Police officials the defendants claim is illegal one they are attempting to achieve their object by illegal means. Hence, the respondent/ plaintiff filed the present suit for permanent injunction by reserving her right to file a separate suit for recovery of money for Rs.36,00,000/- from the 1st defendant later and filed the petition for temporary injunction and got order of ad-interim injunction the Order 39 Rule 3 of CPC has been complied properly. Hence, the petition ought to be dismissed.

3. Point for Consideration:-

Whether the petition under Order 39 rule 4 and section 151 of CPC to set aside and vacate the ad interim injunction granted in I.A.No.2/2025 on 09.04.2025 is to be allowed?

4. Points:-

4.1. Heard learned counsels for both the parties and records perused. The suit filed by respondent/plaintiff for permanent injunction that her possession has been disturbed by petitioner/ 2nd defendant and based on title deed on the date of filing of suit itself this court with considering averments with supported documents have granted ad-interim temporary injunction till 23.04.2025. But on 15th April the petitioner/ 2nd defendant filed memo by stating that the ad-interim order has not been complied properly by the respondent/plaintiff as per the mandatory provision of CPC.

4.2. On perusal of the affidavit filed by the petitioner after 24 hours of getting order from the court, the respondent/plaintiff have to send the copy of documents which is attached to the plaint while getting the order of ad interim temporary injunction to the petitioner/2nd defendant through registered post. The respondent/plaintiff while filing the suit have placed 19 documents along with plaint but, in the RPAD cover which they have sent to the intimation of interim order to the petitioner/ 2nd respondent and 1st defendant they have sent only the petition and plaint copy alone which comes to total weight of 70 grams as per the receipt of postal department attached in affidavit. From the affidavit and memo of the petitioner/2nd defendant this court came to know that the plaintiff has not complied the Mandatory provision of order 39 rule 3 of CPC after got an order of ad-interim temporary injunction properly. But it is the mistake caused by the counsel, for which the party would not be prejudiced. Further the temporary injunction application itself came for order today after hearing both side and this court finds it is fit case to grant order of temporary injunction, the procedural irregularity will not

be affected to pass final order in temporary injunction application in I.A.No.2/2025. Further this court pronouncing order in temporary injunction application today on merits hence, this court dismissed this petition as infratuous.

In the result, this petition is dismissed. No cost.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 25th day of April 2025.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses and documents on petitioner side:-

Nil

List of witnesses and documents on Respondent side:-

Nil

Sd/N.Renuga
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.5/2025
O.S.No.44/2025
Dated : 25.04.2025
DMC, Sulur.