

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

Present : **Tmt.N.Renuga**, B.A., B.L.,
District Munsif, Sulur
Wednesday, the 27th day of March 2024

I.A.No.3/2023
in
O.S.No.80/2023

N.Priya

...Petitioner/ Plaintiff

/ Vs /

M.Shantha

...Respondent/ Defendant

This petition coming on 30.10.2023 for final hearing before me in the presence of Thiru.K.Sri Kumar, Advocate for the Petitioner and Mr.C.Theivabharathi, 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 1 and 2 and section 151 of CPC to an order of ad Interim Injunction restraining the respondent, their men not to try to disturb the petitioner/plaintiff peaceful possession and enjoyment, encroachment of the petition mentioned property and then to the said effect pass an order of temporary injunction till the disposal of suit.

1. The brief averments of the affidavit filed by the Petitioner as follows:

1.1. The petitioner/plaintiff file the main suit for permanent injunction against the respondent/defendant the plaintiff purchased the suit property on 18.01.2021 in doc.No.506/2021 from one Mohan son of Ramalingam. The said Mohan has purchased the suit property 10.03.2008 in doc.No.2383/2008. The suit property has been in possession and enjoyment of the plaintiff from the date of purchase. Further on 05.06.2023 this defendant had stated six members name and have entered into suit property and the claims ownership over the property.

1.2. The defendant has stated on 01.11.1987 he entered a sale agreement with

one Shantha, Madavi Kutti, P.P.Kunju Balu with K.P.Murugayan, Thilagavathi, Sumathi, Minor Jayakumar, Subbathal, K.P.Subbaian, Sakunthala, Sivakalai, Krishnammal, Minor Vijayakumar, Minor guardian Saraswathi and one Saraswathi entered a sale agreement in respect of suit survey total extent 9.38 acres and on 07.12.1987 they executed a joint business deed but on perusal of the said document the purchase of stamp paper he sated as 23.08.1988.

1.3. Further in the said document there was an endorsement on several case by the said Murugaian and K.Subbaian alone. The persons who present there have shown some documents ie., OS.No.1112/2013 that the decree obtained by the defendant by restraining the others from disturbing the peaceful possession and enjoyment of the property. Further the said decree has been registered before the Sub Registrar Office, Sular. On perusal of the entire records of OS.No.1112/2013 the defendant has entered sale agreement between with some other parties in the year 1987 and the said suit filed for specific performance and for non appearance of defendant therein the said suit has been decreed and the decree dated 05.12.2014 has been registered before Sular Sub Registrar office in doc.No.656/2023. But the defendant has not taken any effects to sale and possession of the suit property by taking any effective steps through process of law.

1.4. Further the defendant alone filed the suit for specific performance and got decree. It is fraudulent and misuse of law. Now the plaintiff alone the possession of the suit property. Hence, the petitioner filed this petition for ad interim temporary injunction till the disposal of suit.

2. The brief averments of counter statement filed by the respondent as follows:

2.1. The petition is false, frivolous and unsustainable in law and on facts of the case. The petitioner/plaintiff not filed any documents proving that, she has issued pre suit notice to the respondent/defendant with regard to the facts and averments connected with the IA.No.3/2023 in OS.No.80/2023 before this Honourable court following the doctrine of Principles of natural justice, giving opportunity to the

respondent/defendant to send reply notice to the petitioner/plaintiff and the filing of IA.No.3/23 in OS.No.80/2023 in an improper filing of the IA.No.3/2023 in OS.No.80/2023 and willful misuse of the process of this Hon'ble court.

2.2. The petitioner/plaintiff has obtained the IA.No.3/2023 in OS.No.80/2023 filed under order 39 rule 1 and 2 of CPC and also obtained the Ad-interim stay order dated 25.07.2023 from this Honourable court without serving the copy of the affidavit and petition having handwritten material alterations with regard to the possession and enjoyment of the suit schedule property by the respondent/defendant on the basis of the decree of permanent injunction already granted by the Hon'ble I Additional District Munsif Court of Coimbatore in OS.No.1112/2013 in favour of the respondent/defendant dated 05.12.2014, which is a willful misuse of the process of this Honourable court and amounting to willfully committing contempt of court under section 2 (c) (iii) and punishable with imprisonment and fine or with both under section 12 of the contempt of courts Act 1971.

2.3. The suit schedule property in OS.No.1112/2013 by the plaintiff viz., the respondent/defendant herein and the description of property is, திருப்பூர் ரிடிடு, சூலூர் சபடி, பல்லடம் தாலூக்கா, தற்பொழுது சூலூர் தாலூக்கா, கண்ணம்பாளையம் கிராமம், க.ச.404 நெ.காலை பு.ஏ.9.38 க்கு தரம் ரூ.7.62 விஸ்தீரணம் கொண்ட பூமியும் மேற்படி பூமிக்குண்டான மாமூல் வழிநடை தட பாத்தியமும் சகிதம். மேற்படி காலையிலுள்ள துரஸ்து கிணர் 1 ஒன்றும் சகிதம் மேற்படி சொத்து கண்ணம்பாளையம் டவுன் பஞ்சாயத்துக்குட்பட்டது. House sites No.5, 7, 10, 14, 22, 26, 31, 36, 39, 39A, 39B, 39C, 40, 57, 63, 66, 82, 83, 84, 106A, 106B, 112, 118 and 119 situated in the 9.38 acre Gandhi Nagar Layout spreading in S.F.No.404 of Kannampalayam Revenue village, Palladam Taluk at present Sulur Taluk of Coimbatore District.

2.4. The defendants No.1 to 10 in OS.No.1112/2013 and their agents are estopped from executing any documents after 01.11.1987, encumbering the above decree schedule property in OS.No.1112/2013 including the house site No.39 of Gandhinagar Layout, Kannampalayam village, viz., the alleged petition mentioned

schedule property in IA.No.3/2023 in OS.No.80/2023 directly or through their agents under the Doctrine of Estoppel as per section 115 of Indian Evidence Act and the filing of IA.No.3/2023 in OS.No.80/2023 before this Hon'ble court by the petitioner/plaintiff is nothing but a willful misuse of the process of this Hon'ble court and amounting to filing of false affidavit willfully punishable under section 191 and 193 of IPC and liable to be proceeded by this Hon'ble court under section 195 of Cr.PC suo-motu and this Hon'ble court is having jurisdiction to recall and set aside the IA.No.3/2023 in OS.No.80/2023 and the ad – interim stay order dated 25.07.2023 which is invalid and non – est in the eye of law obtained by the petitioner/plaintiff. It is liable to be set aside and the IA.No.3/2023 in OS.No.80/2023 is liable to be dismissed in limine.

3. Point for Consideration:-

Whether the petition under Order 39 rule 1 and 2 of CPC is to be allowed?

4. Points:-

4.1. Heard both side. Perused records. This petition filed by the petitioner/plaintiff for temporary injunction and the main suit for permanent injunction. The petitioner/plaintiff contention is, she had purchased the suit property from one Mohan through the sale deed dated 18.01.2021. The said Mohan had purchased the suit property through the sale deed dated 10.03.2008 in doc.No.2383/2008. Further the petitioner/plaintiff has been in possession and enjoyment of the property her possession was disturbed by the respondent/defendant. Hence, she filed the suit for permanent injunction.

4.2. On the side of respondent/defendant had stated that, there is no title, right, possession for the said R.Mohan to sell the suit property in favour of the petitioner/plaintiff on 10.03.2008. The said document has been void abinitio and invalid one. The said document has been executed by R.Mohan on the basis of doc.No.1416/2007 executed by the defendants in OS.No.1112/2013 by appointing one P.Easwaran as power agent of the defendants therein. Further the suit in O.S.1112/2013 has been decreed by restraining the defendants therein from

disturbing the peaceful possession and enjoyment of the property including the suit property. Hence, the respondent/defendant claims the petitioner/plaintiff is not entitled to get the order of temporary injunction.

4.3. On perusal of both side records the both side case is the plaintiff have purchased the suit property from one R.Mohan through the Ex.P.1 sale deed. The said R.Mohan had purchased the suit property through the doc.No.2383/2008 dated 10.03.2008 from one Easwaran who is the power agent of original owners. The defendant has alleged, she is the agreement holder of the suit property from the K.P.Murugaian, Thilagavathi, Sumathi, Subbathal, K.P.Subbaian, Sakunthala, Sivakalai, Krishnammal, Vijayakumar, Saraswathi with one M.Madavi Kutti and P.T.Kunji Balu through the agreement dated 01.11.1987. The certified copy of said agreement has been marked as Ex.P.2. Further a joint business deed dated 07.12.1987 is marked as Ex.P.3. The plaint in OS.No.1112/2013 is marked as Ex.P.4. On perusal of the Ex.P.4 the present defendant herein has filed a suit for specific performance in the year 2013 on the basis of 1.11.1987 sale agreement and she got exparte decree against the original owners for specific performance the said decree is marked as Ex.P.6. On perusal of the decree on 05.12.2014 the suit has been decreed for specific performance by directing the owners to execute sale deed and for permanent injunction by restraining the defendants there in from disturbing peaceful enjoyment over the suit property there in. But prior to that, the plaintiff's vendor Mohan has got sale deed in respect of suit property on 10.03.2008. It is before the filing of the suit in OS.No.1112/2013 by this defendant against the owners in the agreement.

4.4. Further the defendant has not obtained any decree for permanent injunction by restraining alienation regarding the suit property in OS.No.1112/2013. Further more, the defendant got decree for specific performance in the year 2014, still now she has not taken any steps to got execute sale deed by defendants there in. But simply the defendant has registered the said decree before the Sub Registrar Office, Sulur, without taking steps to execute the decree for specific performance

and without getting any sale deed in respect of suit property in favour of the defendant herein certainly she has no right over the suit property. In addition to that, the said sale deed dated 10.03.2008 has been filed by the respondent/defendant's side and on perusal of the same, the persons who are executed agreement on 07.11.1987 in favour of the defendant including two other persons, have executed general power of attorney in doc.No.1416/2007 in favour of one Easwaran. The said Easwaran sold the suit property to the plaintiff's vendor Mohan. Hence, before filing of the suit in OS.No.1112/2013 by the defendant the suit property has been sold to the plaintiff's vendor Mohan. Hence, now the defendant has no valid title over the suit property, by registering the said decree also has not confer any valid title to the defendant, in this circumstances the plaintiff has proved his prima faci title over the suit property possession over the suit property, therefore the all other defence taken by the respondent/defendant will be decided on merits, further this petition is not been allowed the petitioner will be put into irreparable loss and hardship. Hence, the balance of convenience in favour of the petitioner/plaintiff. Hence, in the interest of justice this petition is allowed.

In the result, this petition is allowed to granted Interim Injunction restraining the respondent, their men not to try to disturb the petitioner/plaintiff peaceful possession and enjoyment, encroachment of the petition mentioned property and granted temporary injunction till the disposal of suit. No cost.

Dictated to the Steno-typist and directly typed by her in computer, and corrected and pronounced by me in open court this the 27th day of March 2024.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses on petitioner side:-

Nil

List of documents on petitioner side :-

Ex.P.1	18.01.2021	Sale deed doc.No.506/2021 infavour of petitioner/plaintiff	Certified copy
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Ex.P.2	01.11.1987	Sale agreement	Certified copy
Ex.P.3	07.12.1987	Joint business agreement	Certified copy
Ex.P.4	---	Plaint in OS.No.1112/2013	Court Certified copy
Ex.P.5	20.11.2014	PW.1 chief in OS.No.1112/2013	Court certified copy
Ex.P.6	05.12.2014	Decree in OS.No.1112/2013	Court certified copy
Ex.P.7	05.12.2014	Judgment in OS.No.1112/2013	Court certified copy
Ex.P.8	13.01.2023	Decree in OS.No.1112/2013 is registered in Sulur Sub Registrar Office doc.No.656/2023	Certified copy
Ex.P.9	---	Aadhaar card for petitioner/plaintiff	Xerox copy

List of witnesses and documents on Respondent side:-

Nil

Sd/N.Renuga
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.3/2023 in
O.S.No.80/2023
Dated : 27.03.2024
DMC, Sulur.