

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

PRESENT: Tmt. V. Devapriya, B.Sc.,M.L.
District Munsif, Madurantakam

Monday, the 30th day of October, 2023

I.A.No. 5/2022
in
O.S. No. 127/2022

Sekar

...Petitioner/Plaintiff

-vs-

1. J.S.Enterprises
Rep. by its Managing Director
Selvadurai
2. Sudhakar

...Respondents/ Defendants

This petition coming up before me on 05.10.2023 for final hearing in the presence of, Thiru.V.Agoram, Counsel for the Petitioner/Plaintiff and Thiru.B.Ramnath, Counsel for Respondents/Defendants and after hearing the arguments on both sides and upon perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition has been filed by the Petitioner/Plaintiff under Order XXXIX Rule 1 & 2 r/w Section 151 of Code of Civil Procedure, to grant temporary injunction against the Respondents/ Defendants restraining them,

their men, agents, servants, or any other representatives from, in any way, interfering with his peaceful possession and enjoyment of the suit property, till the disposal of the suit.

2.The averments stated in the petition in brief:

Originally the suit property belonged to one Manicka Gramini, S/o. Irusappa Gramini and the Petitioner/Plaintiff's father, Kanniyappan had purchased the same from him under a registered sale deed dated 06.03.1992 and since then, he is in possession and enjoyment of the suit property. The Petitioner/Plaintiff's father, Kanniyappan is the absolute owner of the suit property. The said Kanniyappa Gramani died on 17.07.2021, leaving behind his wife Vijaya, his son Sekar, Lakshmanan, Ganga and Karpagam as his class-I legal heirs. The Petitioner/Plaintiff is filing this suit on behalf of other legal heirs also.

3. One Thayarammal, W/o. Kistappa Gramani filed a suit in O.S.No.254 of 2004 on the file of this court, as against the said Kanniyappa Gramani, for declaration of title in her favour, in respect of the suit property herein. The Petitioner/Plaintiff's father also had filed another suit against the said Thayarammal, for declaration of title and for consequential permanent injunction, in respect of the suit property in O.S.No.255 of 2004, before this court. The above suit filed by the said Thayarammal was dismissed and the

above suit filed by the said Kanniyappan was decreed, by a common judgement dated on 30.04.2008, after full trial.

4. Subsequently, the said Tharayammal preferred an appeal in A.S.No.28 of 2009 on the file of Hon'ble Sub Court, Maduranthakam as against the judgement of this court in O.S.No.254 of 2004 and the same was dismissed. Similarly, cross appeal was filed by Petitioner/Plaintiff's father Kanniyappa Gramani in A.S.No.29 of 2009 on the file of Hon'ble Sub Court, Maduranthakam, to confirm the judgement in O.S.No.255 of 2004, and the same was allowed, confirming the judgement passed in O.S. No. 255 of 2004. Thus, the Petitioner/Plaintiff's title and possession was confirmed by this court.

5. The Respondents/Defendants are no way connected with the suit property and they are total stranger to the suit property. The Respondents/Defendants attempted to trespass over the suit property, by way of putting up illegal compound wall in the suit property, which was successfully resisted. The Petitioner/Plaintiff had applied for patta in the Taluk office and he was instructed to obtain a legal opinion from government pleader. Therefore, the Petitioner/Plaintiff's father had obtained a legal opinion from Additional Public Prosecutor on 23.09.2019 and the Patta transfer proceedings are still pending. Taking advantage of the same, the Respondents/Defendants are attempting to trespass over the suit property. One such attempt was made on 04.11.2022 and

the same was resisted by the Petitioner/Plaintiff. The Respondents/Defendants are casting cloud over the Petitioner/Plaintiff's title. Hence the petition.

6.The averments stated in the Counter filed by the 1st Respondent/ 1st Defendant in brief:

The averments in the affidavit, filed in support of this petition, are false. The 1st Respondent/1st Defendant is not party to the court proceedings alleged by the Petitioner/Plaintiff and he is not aware of the same. The 1st Respondent/1st Defendant is the absolute owner of the suit property. The suit property originally belonged to one Manicka Gramini and he was in possession of the same. The said Manicka Gramini had executed a power of attorney deed in favour one Balasubramanian, in respect of the suit property and the said Balasaubramanian had executed a registered sale deed dated 03.02.1992 in favour of one Sundrarajan, as power agent of Manicka Gramini, in respect of the suit property. Since then, the said Sundrarajan was in possession and enjoyment of the same and patta no.1378 was granted in his favour.

7. The 1st Respondent /1st Defendant purchased the suit property for a valid sale consideration from the said R.Sundrarajan by a registered sale deed dated 24.06.2004 and since then, he is in peaceful possession and enjoyment of the suit property till date and patta no.1378 was granted in favour of the 1st Respondent /1st Defendant.

8. The Petitioner/Plaintiff is a total stranger to the suit property and he does not have any right, title or interest over the suit property and he is casting cloud over the title of the 1st Respondent/1st Defendant over the suit property. The Petitioner/Plaintiff's father Kanniappa Gramani, along with his henchmen, attempted to interfere with the 1st Respondent/ 1st Defendant's peaceful possession and enjoyment of the suit property. One such attempt was made on 03.06.2015, when the 1st Respondent/ 1st Defendant was constructing the compound wall, around the suit property and the same was successfully averted by the 1st Respondent/ 1st Defendant.

9. The Petitioner/Plaintiff's father, Kanniappa Gramani was a man of money and muscle power and 1st Respondent/ 1st Defendant apprehended that the said Kanniappa Gramani may renew his attempt. Hence the 1st Respondent/ 1st Defendant herein filed a suit in O.S.No.202 of 2015 on the file of this court, against the present Petitioner/Plaintiff's father, Kanniappa Gramani, for declaration of the present 1st Respondent/ 1st Defendant's title over the suit property and for consequential decree of permanent injunction.

10. The said suit summons were duly served and the said Kanniappa Gramani entered appearance through the same advocate and thereafter he was set exparte for non filing of written statement and the said suit was decreed in favour of the present 1st Respondent/ 1st Defendant declaring his title over the suit property and consequential relief of permanent injunction was granted restraining the said

Kanniappa Gramani, his men, agents, servants, representatives or any other person acting on his behalf from in any way interfering with present 1st Respondent/1st Defendant's peaceful possession and enjoyment of the suit property.

11. The Petitioner/Plaintiff is very well aware of the proceedings in O.S.No. 202 of 2015 but has suppressed all the above facts in O.S.No. 202 of 2015 and has approached this Court with unclean hands. Neither the Petitioner/Plaintiff herein nor his father, Kanniappa Gramani, took any steps within time against the judgment and decree passed in O.S.No. 202 of 2015 on the file of this court and hence the same attained finality. Hence the present suit filed by the son of Kanniappa Gramani is barred by res judicata.

12. The Petitioner/Plaintiff herein has not filed any document to show his possession and enjoyment of the suit property on the date of filing of the present suit. The Petitioner/Plaintiff is residing in the suit village and he is very well aware of the 1st Respondent/ 1st Defendant's title and possession and enjoyment of the suit property. Hence this petition is not maintainable.

13. The suit for permanent injunction in the absence of declaration of title is not maintainable, when there is cloud over title. The Petitioner/Plaintiff herein has not sought for the declaration of his title before seeking the relief of permanent injunction and he has to establish his title before seeking permanent injunction. The Petitioner/Plaintiff has not added all the legal heirs of his father namely

Kanniappa Gramani as parties to the present application. This petition is bad for non-joinder of proper and necessary parties and hence the petition is liable to be dismissed on this point.

14. There is no merits in this petition. The Petitioner/Plaintiff has not made out a prima facie case and balance of convenience in his favour and also not shown any irreparable loss, for the grant of temporary injunction. Hence, this petition liable is to be dismissed with costs.

15. The averments stated in the Counter filed by the 2nd Respondent/ 2nd Defendant in brief:

This petition is not maintainable. The 2nd Respondent/ 2nd Defendant has been added as an unnecessary party to the above suit. There is no averment against the 2nd Respondent/ 2nd Defendant. There is no cause of action and merits in the present suit and is liable to be dismissed. Hence, this petition liable is to be dismissed with costs.

16. The point for determination is whether this petition is to be allowed or not?

17. On the side of Petitioner/Plaintiff Exhibits P-1 to P-8 were marked and no witnesses were examined. On the side of the Respondents/Defendants Exhibits R-1 to R-13 were marked and no witnesses were examined.

18. Heard both sides and perused the records.

19. The Petitioner/Plaintiff had filed this petition for interim injunction to restrain the Respondents/Defendants from interfering his possession in the suit

properties. The Petitioner/Plaintiff claims that the suit properties was purchased by his father, Kanniyappan under sale deed dated 06.03.1992, from Manika Gramini and that after his death, the Petitioner/Plaintiff and other legal heirs are in possession of the same. The Exhibit P-1 is the certified copy of sale deed of the said Kanniyappan.

20. The Respondents/Defendants, on the other hand, claims that the said Manika Gramini had executed a power of attorney in favour of one Balasubramanian, in respect of suit properties and that the said Balasubramanian had sold the same to one Sundrarajan and that the 1st Respondent/ 1st Defendant had purchased the suit properties from the said Sundrarajan.

21. The Exhibit R-1 is the said power of attorney executed by Manika Gramini in favour of the said Balasubramani. The Exhibit R-2 is the certified copy of sale deed in favour of Sundrarajan. The Exhibit R-4 and R-5 stands in the name of said Sundrarajan. The Exhibit R-6 is the certified copy of sale deed in favour of 1st Respondent/ 1st Defendant and the Exhibit R-7 and R-8 stands in the name of the 1st Respondent/1st Defendant.

22. The Petitioner/Plaintiff had stated that one Thayarammal had filed a suit in O.S. No. 254 of 2004 against his father and that his father had filed another suit in O.S. No. 255 of 2004, before this court, in respect of the suit properties, for declaraion of title and that the suit filed by the said Thayarammal, was dismissed

and the suit filed by his father, was allowed, by a common judgement dated 30.04.2008. The Petitioner/Plaintiff further stated that the appeals filed by the said Thayarammal before the Hon'ble Sub-Court, Madurantakam, in A.S. No. 28 of 2009 was dismissed and that therefore his father's title over the suit property was confirmed by the court.

23. The Exhibit P-3 is the certified copy of decree in A.S. No. 28 of 2009 and Exhibit P-4 is the common judgement in A.S. No. 28 of 2009 and A.S. No. 29 of 2009. The Exhibit P-8 is the common judgement passed in O.S. No. 254 of 2004 and O.S. No. 255 of 2004. But, the Exhibits P-3, P-4 and P-8, does not contain the description of the suit properties. Further, the O.S. No. 254 of 2004 and O.S. No. 255 of 2004, on the file of this court, was filed for permanent injunction and not for declaration of title.

24. On the other hand, the Exhibits R-9 to R-11 prima facie shows that the 1st Respondent/1st Defendant had filed a suit a for declaration of title in respect of suit properties, against the Petitioner/Plaintiff's father and the same was decreed in favour of the 1st Respondent/1st Defendant. The Exhibit R-12 and R-13 stands in the name of the 1st Respondent/1st Defendant.

25. The Petitioner/Plaintiff had not filed any document to show his prima facie possession in the suit properties and also his clear title over the suit properties. Thus, the Petitioner/Plaintiff had not shown prima facie case and the balance of

convenience in his favour and the irreparable loss being caused to him. Hence, for the foregoing reasons, this court is not inclined to allow this petition.

26. In the result, this petition is dismissed. No costs.

Typed by me in my laptop, corrected and pronounced by me in open court on this the 30th day of October, 2023

District Munsif
Madurantakam

Petitioner side witnesses:

Nil

Petitioner side documents:

Ex.P1- Certified copy of Sale Deed dated 06.03.1992

Ex.P2- Certified copy of Chitta in favour of Manicka Gramani

Ex.P3- Certified copy of Decree passed in A.S.No.28/2009 dated 04.10.2010

Ex.P4- Certified copy of common Judgement passed in A.S.No.28/2009 and
A.S.No.28/2009 dated 04.10.2010

Ex.P5- Online copy of Death Certificate of Kanniyappa Gramani dated 02.08.2021

Ex.P6- Online copy of Legal heir Certificate of Kanniyappa Gramani dated
26.08.2021

Ex.P7- Legal opinion of Additional Public Prosecutor cum Government Pleader
dated 23.09.2019

Ex.P8- Certified copy of Common Judgement passed in O.S.No.254 of 2004 and
O.S.No.255 of 2004 dated 30.04.2008

Respondents side witnesses:

Nil

Respondents side documents:

Ex.R1- Certified copy of Power of Attorney Deed dated 15.03.1991

Ex.R2- Certified copy of Sale Deed dated 03.02.1992

Ex.R3- Certified copy of Patta dated 10.12.1991

Ex.R4- Certified copy of Patta No.1378 dated 23.04.1992

Ex.R5- Certified copy of Patta No.1378 dated 27.05.2004

Ex.R6- Certified copy of Sale deed dated 24.06.2004

Ex.R7- Certified copy of Patta No.1378 dated 15.06.2018

Ex.R8- Certified copy of kist receipt dated 12.06.2015

Ex.R9- Certified copy of Complaint in O.S. No. 202 of 2015

Ex.R10- Certified copy of Judgement passed in O.S.No.202/2015 dated 28.09.2015

Ex.R11- Certified copy of Decree passed in O.S.No.202/2015 dated 28.09.2015

Ex.R12- Online copy of Patta No.1378 dated 13.02.2023

Ex.R13- Kist receipt dated 13.02.2023

District Munsif
Madurantakam