

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM.

PRESENT: Selvi. M.S. Varalakshmi, B.A.,B.L.,
District Munsif, Madurantakam.

Tuesday the 5th day of February 2019.

I.A. No. 1510/2018

in

O.S. No. 123/2018

Krishnamoorthi Reddiyar

...Petitioner/Plaintiff.

-vs-

1. Kandhan
2. Chandrababu
3. Padhmanaban
4. Ramesh
5. Sekar
6. Baskar
7. Selvam
8. Nandhagopal

...Respondents/Defendants.

This Petition is coming before me for final hearing on 10.01.2019 in the presence of Thiru.J.Gopinath, Thiru.V.Mohan, Thiru.V.Loganathan and Ms.A.Mujeebunisha counsel for Petitioner/Plaintiff and Thiru.S.Subramanian counsel for Respondents/ Defendants and upon hearing the both sides and upon perusal of records and having stood over for consideration till this date, this court delivered the following.

ORDER

The Petition filed Under Order XXXIX Rule 1 and 2 and Section 151 of CPC to grant and order of injunction against the Respondents/Defendants, their men, servants and

agents from any way interfering the peaceful possession and enjoyment of the schedule of suit property till the disposal of the suit and pass such other orders.

2. The Petition mentioned averments is as follows:

The Petitioner/Plaintiff submit that he absolutely possession over the suit property. The suit property is poramboke land which is the adjacent patta land Survey No. 125 belongs to him. The suit property is since possession and enjoyed by the ancestrally by the forefathers of him for the 10 decades after that for the past 3 decades the property was enjoyed by him. He further submit that on 08.02.1989 the Madurantakam Thasildar passed an order in that order the Thasildhar also recognized the possession and enjoyment of him over the suit property. After that one Karuna was interfere the peaceful possession of him for that he has filed the O.S.No. 304/1998 in the file of this Hon'ble court the same was decreed infavour of him on 04.11.1993 still now the property is under the possession and enjoyment of him and he only cultivating harvesting the plants and also planted some trees and the same also maintaining by him only, he also paying 'B' memo tax for the Government.

The Petitioner furthr submit that the Respondents/Defendants are strangers of the suit property and he residing nearly 8 Kilo meters apart from the suit property village, hence the Respondents/Defendants taking advantage attempt to interfere with the Plaintiff peaceful possession and enjoyment of the suit property. The Petitioner further submits that the Respondents/Defendnats no way connected or related to the suit property. The Respondents/Defnednats who have no any right, title or interest over the suit properties. The Respondents/Defendnats are total strangers to the suit property. The Respondents/Defendants are very powerful in men and money and taking advantage of the same, the Respondents/

Defendants attempt to interfere with his peaceful possession and enjoyment of the same. On such attempt was made on 18.08.2018 and trying to trespass and put up the sand which was illegally theft from near by kilayar river the same was successfully prevented by him with great difficulties and he also given complaint before the Melmaruvathur police station and same was registered as C.S.R.No.157/2018 on the file of Melmaruvathur police but due to the highly political influence of the Respondents/Defendants the police had not taken the action against the Respondents/Defendants. Therefore filing this suit for permanent injunction against the Respondents/Defendants.

3. The Counter filed by the 3rd Respondent/Defendant and adopted by other Respondents/Defendants is as follows:

The petition to grant of interim injunction restraining the Defendants from any way interfering with the peaceful possession and enjoyment of the suit property is not maintainable under law and on facts.

The Respondents submit that the Petitioner/Plaintiff suppressing the real facts and filed the above suit with ulterior motive. The Petitioner has not come to court with clean and clear hands. There are three temples situate in the suit property namely Kanniamman temple, Ayyanarappan temple, Gangaianman temple. The temples situate in the suit property for time immemorial. In the Thandalam village map contains the existence of temple in the year 1904 and also clearly shows that the temple situate in the suit property. The petitioner/Plaintiff native village is the suit village. Hence the Petitioner/Plaintiff also knows very well about the temple situate in the suit property. The suit property is a road Promboke. The alleged order passed by Thasildhar, Madurantakam on 08.02.1989 is not in respect of the suit property. The

order passed only in respect of the trees situate in the Thandukaran between the suit survey number and Defendants property. Therefore the order passed by Thasildar and the suit property are both different places. The earlier suit filed by Plaintiff against one Karna is not binding the Defendants. There is no boundaries in the earlier suit. Injunction cannot be granted restraining the Defendants and other villagers from work shipping the temple.

All the villagers are decided to renovate the temples situated in the suit property and the Petitioner/Plaintiff also given a oral consent for renovation work. But due the enmity with the Respondent/Defendant and gave a false complaint before Melmaruvathur police station against the Respondent/Defendants are commissioner and in the suit property. After the due enquiry the Melmaruvathur Police closed the complaint. Thereafter the Petitioner filed the above case and got interim injunction. Due to the order of injunction the Respondents put a great difficulty worship the temple in the suit property. The all the villagers are the necessary parties to the above proceedings. The Petitioner is not in possession and enjoyment of the suit property. There is no merits in the application. Therefore prayed that the petition may be dismissed with cost.

4. Now the point for determination is

Whether the petitioner is entitled for the relief sought for?

On the side of the Petitioner/Plaintiff the Exhibits P-1 to P-8 were marked. On the side of the Respondent/Defendant the Exhibits R-1 to R-3 were marked.

5. Heard and perused the records. The Petitioner herein filed this present application for the relief of temporary injunction restraining the Defendants from in any way interfering with the peaceful possession and enjoyment of the Petitioners in the suit survey number. The

petitioner herein had stated that he is the absolute possession and enjoyment over the suit property and further stated that the suit property comes under the category of poramboke land which is situated adjacent to his patta land of the Petitioner bearing S.No. 125. Thereby the Petitioner is in the possession and enjoyment of the suit property for more than 10 decades by his forefathers and thereafter by the petitioners for the past 3 decades. The Petitioner further stated that on 08.02.1989. The Thasildhar, Madurantakam has passed an order in which the Thasildhar also recognized the possession and enjoyment of the petitioner over the suit property. Thereafter one Karuna was interfered with the peaceful possession and enjoyment of the Petitioners with regard to the suit property. Thereby the petitioner herein had filed the original suit bearing O.S.No. 304/1998 with regard to the suit survey number. In which the Hon'ble court passed the decree in his favour, the said decree is marked as Exhibit P-2. On perusal of the 2nd item of Exhibit P-1, it is as same as the Petition mentioned property. The petitioner also filed the computer generated patta bearing patta No. 55 to prove the fact that his patta land bearing .No. 125 is situated nearer to the suit Survey number. On perusal of Exhibit P-2, it stands in the name of the Petitioner. The petitioner herein had stated that he only planting and harvesting the plants and trees, thereby maintaining the petition mentioned schedule of property. For which he also subjected to the payment of 'B' memo tax, however the 'B' memo receipt has not been filed by the Petitioner herein. The petitioner further stated that the Respondents are strangers to the suit property thereby the Respondent attempt to interfere with the Petitioner's peaceful possession and enjoyment of the suit property. The Respondent has not is having any right, title or interest over the suit property. In spite of which the Respondent made an attempt to interfere and trespass into the suit property on

18.08.2018. As the result, the Petitioner herein had lodged a complaint before the Sub-Inspector of Police, Melmaruvathur Police station, the said complaint is marked as Exhibit P-3. The CSR for the said complaint is marked as Exhibit P-4. To show the nature of the suit property the petitioner herein had filed the Photographs of the suit property along with the Compact Disk as Exhibit P-5. The petitioner further stated thereafter the Respondent again trespass into the suit property on 31.10.2018 pending the present application. For which the petitioner herein had lodged a complaint before the Sub-Inspector of Police, Melmaruvathur Police station, the said complaint is marked as Exhibit P-7 and the CSR for the said complaint is marked as Exhibit P-8. To show the fact that the Respondent destroyed the fencing of the Petitioner put up by him in the suit property is marked as Exhibit P-6. Thereby the petitioner herein prayed to allow this application and grant the temporary injunction till the disposal of the suit.

The Respondent herein filed the counter stating the fact that the petition mentioned schedule property there exists three temples namely Kanniamman temple, Ayyanarappan temple, Gangaianman temple. This temples situated in the petition mentioned schedule of property for time immemorial. In the Thandalam village map the existence of temple clearly shown. The suit village map is marked as Exhibit R-3. On perusal of Exhibit R-3, the existence of temple in S.No. 126 has not been mentioned. On further perusal of Exhibit R-3, the S.No. 125, the Petitioner's patta land lying adjacent to S.No. 126. Furthermore on perusal of Exhibit R-3, the Village road is also not found in the S.No. 126. The Respondent herein had stated that the order passed by the Thasildhar, Madurantakam on 08.02.1989 is not in respect of the petition mentioned schedule of property. However both the

Petitioner and the Respondents has not chosen to file the order passed by the Thasildhar, Madurantakam. The Petitioner further stated that the Exhibit P-1 is a Decree, passed in the suit filed by the Petitioner between one Karuna. The Respondent herein is not cited as a party to the Exhibit P-1, thereby the said Exhibit P-1 has not have any binding force over the Respondent. Furthermore the Respondent herein had stated that all the Villagers decided to renovate the temples situated in the suit property, for which the Petitioner also gave a oral consent for renovation work. Whereas due to enmity with the Respondent and the Petitioner gave a false complaint before the Melmaruvathur Police station against the Respondent and after due enquiry, the Melmaruvathur Police closed the complaint.

On perusal of records, the Respondent herein has not filed the referred charge sheet filed by the Police authorities. The Respondent herein had filed the 'A' register extract for the fasili year 1427 with regard to the suit survey number as Exhibit R-1. On perusal of which the suit survey number 126, the total extent is mentioned as 38.5 Aers and the same stands in the name of one Kosal Ram. In which the existence if cart way, the Ayyaranappan temple, Kanniamman temple and Gangaiamman temple stated. The petitioner herein had claimed an extent of 20 cents alone in S.No. 126. On perusal of Exhibit R-3, the existence' of temple in S.No. 126 has not been stated. The Exhibit R-1, stands as contrary to the Exhibit R-3. The validity of R-3 shall be decided only in the fair trial. The Respondent herein also filed the FMB Sketch for the suit survey number as Exhibit R-2. On perusal of which, the S.No. 125 is lying adjacent to S.No. 126. In Exhibit P-1, the possession of the petitioner over the suit property has been confirmed by the Hon'ble court. Furthermore on perusal of Exhibit P-3 to P-8, the Petitioner herein made out the prima facie case of the Respondent interference with

the peaceful possession and enjoyment of the Petitioner in the schedule mentioned property. Furthermore the balance of convenience is also lies in favour of the Petitioner and irreparable loss and hardship would caused to the Petitioner, in view of not granting the temporary injunction in favour of the petitioner.

6. In the result, the Interim Application is allowed without costs.

7. Dictated to the Stenographer and transcribed by her and corrected and pronounced by me in open court on this the 29th day of January 2019.

**District Munsif,
Madurantakam.**

Petitioner/Plaintiff side documents:

- Ex.P-1- The Decree and Judgment in O.S.No. 304/1998 passed by this Hon'ble court dated 04.11.1993
- Ex.P-2- The Computer patta bearing patta No. 55 dated 24.11.2017
- Ex.P-3- The Complaint given by the Plaintiff to the Melmaruvathur Police station dated 19.08.2018
- Ex.P-4- The CSR dated 19.08.2018
- Ex.P-5- The Photographs with CD
- Ex.P-6- The Photographs with CD
- Ex.P-7- The Complaint given by the Plaintiff to the Melmaruvathur Police station dated 31.10.2018
- Ex.P-8- The CSR copy dated 01.11v.2018

Respondents/Defendants/Defendants side documents:

- Ex.R-1 The Adangal Extract
- Ex.R2- The FMB Sketch
- Ex.R3- The Village Map

Both sides witness:

NIL

**District Munsif,
Madurantakam.**

Draft/Fair/Order

I.A. No. 1510/2018 in

O.S. No. 123/2018.

D.D.: 29.01.2019.

DMC, MKM.

petition averments is as follows:

The petitioner is the 13th defendant in the suit and the petitioner submits that collusion with the defendants 1 to 12 tiled the suit for partition. According to plaintiff allegations the defendant's 13 to 15 are strangers and not entitled to property and further allegations in plaintiff that I have filed earlier suit in O.S.No.336/1996 on the file of Hon'ble court against the defendants 1 to 4 and

-2-

succession. The present plaintiff allegation that the respondents/plaintiffs are not parties and the Judgement, Decree is not binding. Then as per plaintiff allegation it is title dispute. I am not claiming under the plaintiffs or their predecessors and without declaration of title, the present suit is not maintainable. Further allegation that their father has not properly conducted the case and hence the Judgment to be set-aside. Hence proper court fee has not been paid and suit has to be filed under section 25(b) of CF Act. If the suit property valued and proper court fee paid under section 25(b) this Hon'ble court may not have jurisdiction to try the suit. Further the plaintiff allegations is that the suit properties were purchased by Rangaswamy (i.e.) grandfather of the plaintiff under document No.1 and 2 of plaintiff. Then the plaintiffs have no right to claim partition. Only the defendants 1 to 4 will get equal share as per law of succession. It is not ancestral property as per plaintiff allegations. Hence the claim of partition is unfounded, opposed to law and it is only an abuse of process of law. Hence the above suit is liable to be dismissed on the ground that as per plaintiff allegations the plaintiffs are not entitled to claim

share. Hence this application is filed to reject the plaint.

3.Counter averments is as follows:

The respondent/plaintiff does not admit any of the allegations set out in the affidavit and petition. The respondent submits that as per the plaint allegation that the suit is maintainable. The suit properties are ancestral property. The plaintiff's grandfather got through ancestral nucleus. The plaintiff is entitled the suit for partition the allegation that the suit to be valued under section 25(b) of TNCF ACT is not valid. The suit is for partition hence the suit is valued property and proper court fee had been paid. Whether the plaintiffs are entitled the share in the suit property are alone to be decided. Hence the present application to reject the plaint is not all maintainable. There is no allegation in the petition to reject the plaint as per order 7 rule 11 of CPC. Hence prays to dismiss the petition.

4. Now the point for determination is:

1. Whether the petitioner is entitled for the relief sought for?

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No witness on both sides. The petitioner side EX.P1 and EX.P2 were marked and no documents on the respondent side.

5. Heard both sides:

Records perused. According to the petitioner, contended that the petitioner already filed the suit against the defendants 1 to 4 in O.S.No.336/1996 on the file of this Hon'ble court and the petitioner is succeeded in the suit. The defendants 1 to 4 are prepared the appeal in A.S.No.18/2001 on the file of Subordinate Court, Madurantakam. That Appeal was also dismissed on 27.9.2001 so that is the filan. The plaintiffs are the sons of 1st defendant hence the earlier suit decree and Judgment are binding the respondents/plaintiffs the earlier suit

is suit for permanent injunction the earlier suit issue that is the plaintiff is right over the suit property is decided in the earlier suit. The respondents/plaintiffs is not possession of the suit property. He is not proved the case to show that the petitioner/13th defendant produced the earlier suit Judgment in O.S.No.336/1996 and Judgment in A.S.No.18/2001. The respondent contention that the earlier suit O.S.No.336/1996 is not binding upon the respondents/defendants because we are not party to the suit and the earlier suit is only for injunction. The earlier suit the father of the respondents/plaintiffs not properly conducted the suit properties are grandfather of the plaintiffs now the plaintiffs is entitled for partition and the present suit is maintainable. The earlier suit Judgment alone produced by the petitioner/13th defendant. The decree are not produced and plaint and written statement in O.S.No.336/1996 not produced the present suit property and the earlier suit property are one and the same. But not clear the petitioner/13th defendant and not produced the plaint and decree of the earlier suit and also the respondents/plaintiffs argued that the title disputed the earlier suit the title is not decided the possession alone is decided the present suit is maintainable and also the respondents/plaintiffs states that the suppression of material fact is not come under the order 7 rule 11 of CPC. The title of the suit property can be decided only at the end of

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the trial in the main suit. Therefore in view of the above reasons this court is not inclined to allow this petition.

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

7. Dictated to the Stenographer and transcribed by her and corrected and pronounced by me in open court on this the 11th day of September 2013.

Both sides witness:

-NIL-

Petitioner side document:

EX.P1 – Judgment in O.S.No.336/1996.

EX.P2 – Judgment in A.S.No.18/2001.

Respondant side document:

-NIL-

COMMON ORDER

I.A.No.1756/2014:

Petition filed under order 9 rule 7 of CPC to set-aside the exparte order passed on 26.8.2014 against the petitioner/2nd defendant in the above suit and for suitable orders.

I.A.No.1758/2014:

Petition filed under order 9 rule 7 of CPC to set aside the exparte order passed on 5.8.2014 against the petitioner/2nd defendant in the I.A.No.1010/2014 and for suitable orders.

2.Petition averments is as follows:

The petitioner states that he is the 2nd defendant in the main suit. The

respondents/plaintiffs filed the suit for declaration and recovery of Possession. The suit was posted on 26.8.2014 and I.A.No.1010/2014 posted on 5.8.2014 for his appearance. On the said date of hearing he could not able to attend this Hon'ble court, due to relative death. Further he came to know that on 26.8.2014 this Hon'ble court was called him and exparte order was passed against him in I.A.No.1010/2014 in O.S.No.356/2014. Now only he came to know about the exparte order. His absence and non filing of Vakalath on 26.8.2014 is neither willful nor wanton and bonafide one. He have got good case on merits. Hence he filing this application to set aside the exparte order dated 5.8.2014 passed against him in I.A.No.1010/2014 and O.S.No.356/2014. If the petitions are not allowed he will be put into heavy loss and hardship. On the other hand no prejudice will be caused to the other side. Hence these petitions.

3. Objection filed by the respondents/plaintiffs are as follows:

The respondent states that the reason stated by the petitioner is not true and no proof has been filed to prove the same. The allegations contained in affidavit filed in support of the petition are all in correct. The respondents submits that he was not able to appear to the court the death of his relative and set exparte on 26.8.2014 and now filing Vakalath are in correct. The present application is filed without filing written statement is not maintainable. As per amended CPC the exparte order cannot be set aside if it is filed without statement. There is no absolutely merits in the above application. The respondents states that the petitioner did not assign proper reason in his affidavit and now come with this petition to drag the proceedings. Hence prays to dismiss the petition.

4. Now the point for determination is:

1. Whether the petitioner is entitled for the relief sought for?

No witness and documents on both sides.

5. Heard both sides:

Records perused. According to the petitioner, he could not appear on 26.8.2014.

The

-3-

Exparte Order passed on the same day. But his absence is neither willful nor wanton. The only objection raised by the respondents is that the petitioner have not produced any documents to prove the reason for his absence and further that this petition is vexatious one and further there is no vehement objection raised by the respondents/plaintiffs and the reason stated by the petitioner is also acceptable. Hence this court is inclined to allow this petition.

6. In the result, petition is allowed on payment of cost of Rs.250/- in each applications paid by the petitioner to the respondents on or before 22.1.2015. Call on 23.1.2015. Failing which these petitions will stand dismissed.

7. Dictated to the Stenographer and directly typed by her and corrected and pronounced by me in open court on this the 19th day of January 2015.

District Munsif,
Madurantakam.

Both sides witness and documents:

-NIL-

District Munsif,
Madurantakam.

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM.

PRESENT: THIRU.S.VIJAYALAGIRI, B.COM. B.L.,
DISTRICT MUNSIF.

Monday the 19th day of January 2015.

I.A.No.1756/2014 and 1758/2014 in

O.S.No.356/2014.

Murugan

.....Petitioner/2nd

Defendant.....

-vs-

1. Geetha
 2. Gunasekar
-Respondents/Plaintiffs.....

These petitions are coming before me for final hearing on 8.1.2015 in the

presence of Thiru.K.S.Gopinathan counsel for petitioner/2nd defendant and of Thiru.R.E.Charles, Thiru.C.Vengadesan, Selvi.K.Priya Ilavarasi counsels for respondents/plaintiffs and on hearing of both sides and on perusal of records and having stood over for consideration till this date and this court delivered the following.

COMMON ORDER

I.A.No.1756/2014:

Petition filed under order 9 rule 7 of CPC to set-aside the exparte order passed on 26.8.2014 against the petitioner/2nd defendant in the above suit and for suitable orders.

I.A.No.1758/2014:

Petition filed under order 9 rule 7 of CPC to set aside the exparte order passed on 5.8.2014 against the petitioner/2nd defendant in the I.A.No.1010/2014 and for suitable orders.

2.Petition averments is as follows:

The petitioner states that he is the 2nd defendant in the main suit. The

-2-

respondents/plaintiffs filed the suit for declaration and recovery of Possession. The suit was posted on 26.8.2014 and I.A.No.1010/2014 posted on 5.8.2014 for his appearance. On the said date of hearing he could not able to attend this Hon'ble court, due to relative death. Further he came to know that on 26.8.2014 this Hon'ble court was called him and exparte order was passed against him in I.A.No.1010/2014 in O.S.No.356/2014. Now only he came to know about the exparte order. His absence and non filing of Vakalath on 26.8.2014 is neither willful nor wanton and bonafide one. He have got good case on merits. Hence he filing this application to set aside the exparte order dated 5.8.2014 passed against him in I.A.No.1010/2014 and O.S.No.356/2014. If the petitions are not allowed he will be put into heavy loss and hardship.

On the other hand no prejudice will be caused to the other side. Hence these petitions.

3. Objection filed by the respondents/plaintiffs are as follows:

The respondent states that the reason stated by the petitioner is not true and no proof has been filed to prove the same. The allegations contained in affidavit filed in support of the petition are all in correct. The respondents submits that he was not able to appear to the court the death of his relative and set exparte on 26.8.2014 and now filing Vakalath are in correct. The present application is filed without filing written statement is not maintainable. As per amended CPC the exparte order cannot be set aside if it is filed without statement. There is no absolutely merits in the above application. The respondents states that the petitioner did not assign proper reason in his affidavit and now come with this petition to drag the proceedings. Hence prays to dismiss the petition.

4. Now the point for determination is:

1. Whether the petitioner is entitled for the relief sought for?

No witness and documents on both sides.

5. Heard both sides:

Records perused. According to the petitioner, he could not appear on 26.8.2014.

The

-3-

Exparte Order passed on the same day. But his absence is neither willful nor wanton. The only objection raised by the respondents is that the petitioner have not produced any documents to prove the reason for his absence and further that this petition is vexatious one and further there is no vehement objection raised by the respondents/plaintiffs and the reason stated by the petitioner is also acceptable. Hence this court is inclined to allow this petition.

6. In the result, petition is allowed on payment of cost of Rs.250/- in each applications paid by the petitioner to the respondents on or before 22.1.2015. Call on 23.1.2015. Failing which these petitions will stand dismissed.

7. Dictated to the Stenographer and directly typed by her and corrected and pronounced by me in open court on this the 19th day of January 2015.

District Munsif,
Madurantakam.

Both sides witness and documents:

-NIL-

District Munsif,
Madurantakam.

in

Draft/Fair/Order

I.A.No.1756/2014,
1758/2014

O.S.No.356/2014.

D.D.: 19.1.2015.

DMC, MKM.