

IN THE COURT OF DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE
NO.01, KODAIKANAL, DINDIGUL DISTRICT

Present: Thiru. M.Selvam, B.A., B.L.,
District Munsif Cum Judicial Magistrate No.01, Kodaikanal
Wednesday, this the 11th day of December 2024

I.A.No. 308 of 2021

in

O.S. No. 107 of 2021

(CNR No.TNDG11-001105-2021)

Murugan

...Petitioner/Plaintiff

/versus/

Gopal

... Respondent/Defendant

This petition is heard in the presence of Thiru. A. Muniyandi., M.A., L.L.B, the Learned counsel for the Petitioner/Plaintiff. Though sufficient opportunities given to the respondent/defendant, he had not turned up to make his submissions and hence, the enquiry on the side of the respondent/defendant is treated as heard. Heard and having stood over for my consideration till this day, this court delivered the following,

ORDER

Petition filed by the petitioner/plaintiff Under Order 39 Rule 1 and 2 of C.P.C to pass an order of temporary injunction restraining the respondent/defendant, his agents, mens from interfering the petitioner's possession and construction in the petition property till the disposal of the Original suit.

1. Brief facts in the petition is as follows:

1.1. The petitioner is the plaintiff in the original suit. The petitioner had purchased the petition property and other properties from One Murugan

Servai. The property in survey no.503/7 to an extent of 1.5 cents was purchased by the petitioner under registered sale deed dated 21.05.1985 in document no. 4656/1985. Then the petitioner had also purchased another 1 cent of land from the said Murugan Servai in the same property vide a registered sale deed dated 20.06.1987. Thereafter, the petitioner purchased property to an extent of 5 cents in survey no.411, which is in possession of the said Murugan Servai was purchased by the petitioner vide an unregistered deed of transfer of possession for a sum of Rs. 6,000/- and also purchased another property vide a separate unregistered deed of transfer of possession and had been in possession of the same. The respondent herein is the son of the said Murugan Servai, who sold the properties to the petitioner.

1.2. The petitioner had settled the properties purchased by him to his children and retained the petition property with himself and was being in possession of the same by constructing a cow shed. Now the petitioner intended to construct a house building in the petition property for his residence. The said Murugan Servai, who sold the properties to the petitioner was also died. At this juncture, the respondent after the demise of his father had caused interference and disturbance to the construction work going on in the petition property. Hence, the petitioner had filed the original suit for the relief of permanent injunction along with this interlocutory application for the relief of temporary injunction.

2. Brief facts in the counter filed by the respondent is as follows:

2.1. The respondent specifically denied the allegations made by the petitioner in his petition. The father of the respondent had sold out totally 2.5 cents in the western side of the property in survey no. 503/7. The petition property was in possession of the respondent from the year of 1960 i.e) from the life time of his father and was being in possession of the same by constructing a cow shed. The petitioner had created a false deed of transfer

of possession as such it was executed by their father. Though the petitioner had transferred the property purchased by him to his children, he had not added them as party to the suit proceedings and also not added the other legal heirs of the Murugan, the alleged vendor of the petitioner. Hence, the suit itself is liable to be dismissed on the ground of non-joinder of necessary parties. The respondent had also gained adverse possession in the petition property. This petition is vexatious one and hence, liable to be dismissed.

3. No oral evidence on either side. Ex.P1 to Ex.P7 marked on the side of the petitioner/plaintiff and no documents marked on the side of the respondent/defendant.

4. Point For Determination:-

(i) Whether the petitioner is entitled for the relief of temporary injunction as sought for till the disposal of the original suit ?

5. Heard and perused the pleadings and materials on record. The petitioner/plaintiff had filed the original suit for the relief of permanent injunction restraining the respondent/defendant, his agents, mens from in anyway interfering the petitioner's possession and construction in the suit property and this interlocutory application is filed for the relief of temporary injunction in this regard till the disposal of the suit. The suit property herein is situated at Dindigul District, Kodaikanal Taluk, Poomparai Village in survey no. 411 to an extent of 5 cents.

6. This court carefully perused the pleadings and the exhibits filed by the parties. Before going in to the discussion, this court wants to emphasis that it is well settled position of law that the courts should not proceed for mini trial of the suit while granting or refusing an application for temporary injunction. It is also long established that for granting of temporary

injunction courts has to be satisfied of three factors namely Prima Facie Case, Balance Of Convenience and Irreparable loss.

7. The petitioners/plaintiffs had relied on Ex.P1 to Ex.P7 in respect of his claim in the petition property. Ex.P1 is the registered sale deed dated 21.05.1985 executed by One Murugan Servai, who is the father of the respondent herein in favour of the petitioner in respect of the property in survey no. 503/1 to an extent of 1.5 cents in the western portion of it's total extent 64 cents. Ex.P2 is the registered sale deed dated 29.06.1987 executed by the said Murugan Servai, who is the father of the respondent herein in favour of the petitioner in respect of the property in survey no. 503/1 to an extent of another 1 cent in the western portion of it's total extent 64 cents.

8. Ex.P3 is an unregistered deed of transfer of possession dated 29.06.1987 executed by the said Murugan Servai, who is the father of the respondent herein in favour of the petitioner in respect of the petition property. The deed also holds the recitals that the possession of the said property was transferred to the petitioner on the date of it's execution. Ex.P4 to Ex.P6 are the house tax receipts in the name of the petitioner's children to whom he had settled the properties purchased by him from the said Murugan Servai. Ex.P7 is the photograph and CD showing the construction work being done in the petition property.

9. The above documents clearly probablise the case of the petitioner/plaintiff. Though the respondent/defendant had denied about the execution of the Ex.P3 deed of transfer of possession by his father in respect of the petition property and contended that he was being in possession of the same from the year 1960, from the life time of his father, he had not produced any single document to establish his possession in the petition property. The contention of the respondent/defendant with regard to the

non-joinder of the necessary parties could also be decided only in the trial after considering the oral and documentary evidence let in by either side. This court considers that the petitioner/plaintiff had established the prima facie case. The Ex.P7 photographs shows that the petitioner herein had started construction work in the petition property and it is in a stage of half work done. At this juncture, if the construction work is restarined by the respondent/defendant, the same would certainly cause prejudice and irreparable loss to the petitioner/plaintiff. The Balance of Convenience is also in favour of the petitioner. Hence, in the interest of justice, this court is inclined to allow this petition.

In the result, this petition is allowed. The respondent/defendant, his agents, mens are hereby restrained by way of temporary injunction from interfering the petitioner's possession and construction in the petition property till the disposal of the Original suit. Considering the facts and circumstance of this case, there is no order as to costs.

This order is typed by me in my official laptop, corrected and pronounced by me in the open court on this 11th day of December 2024.

**District Munsif Cum
Judicial Magistrate No.01,
Kodaikanal.**

Petitioner side witness: Nil

Petitioner side exhibits:

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|-------|------------|---|----------|
| Ex.P1 | 21.05.1985 | Sale deed in favour of the petitioner | Original |
| Ex.P2 | 20.06.1987 | Sale deed in favour of the petitioner | Original |
| Ex.P3 | 29.06.1987 | Unregistered deed of transfer of possession | Original |

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|-------|-----|--------------------|----------|
| Ex.P4 | ... | House tax receipts | Original |
| Ex.P5 | ... | House tax receipts | Original |
| Ex.P6 | ... | House tax receipts | Original |
| Ex.P7 | ... | Photographs and CD | Original |

Respondent side witnesses and exhibits : Nil

District Munsif Cum
Judicial Magistrate No.01,
Kodaikanal.

District Munsif cum Judicial
Magistrate No.I Court,
Kodaikanal, Dindigul District
I.A.No. 308 of 2021
in
O.S.No. 107 of 2021
Draft/Fair Order
dated: 11.12.2024