

IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF, NAGERCOIL

Present: Thiru. V. AGAVITHAN, B.A., B.L.(Hon's)

I Additional District Munsif Court,

Nagercoil.

Monday the 9th day of August 2021

I.A.No.2/2019

in

O.S.622/2010

Boopathy

... Petitioner/ Plaintiff

And

Johnson

... Respondent/1st Defendant

This Petition is coming before this Court for final hearing in the presence of Advocate Mr.Hamilton Alexander for the Petitioner/Plaintiff and Advocate Mr. M.Parameswaran for the Respondent/1st Defendant. Heard both side contentions and having stood over for consideration till this day, this Court delivered the following.

ORDER

1. This is petition filed by the Petitioner Under O 36 R 1 and 2 and Sec. 151 CPC for the relief of *ad interim* injunction.

2. Gist of the petition:

The petitioner filed a commission petition in I.A.No.460/2017 and mandatory injunction Petition in I.A.No.459/2017. Subsequently, the commission petition was allowed. The respondent fearing that the truth would get revealed to this Court through the Commission visit, to erase the 2017 evidences, to block the activities conducted in his property from public eye and to block his free access to his property, the respondent/ 1st defendant during night hours, has constructed a compound wall in his property, whereby blocking the petitioner's access to his property. Hence this petition.

3. Crux of the Counter :

The 1st respondent has made constructions within his property alone. The petitioner does not have any patta land or poramboke land in the petition schedule property. The petitioner's access to his property was blocked by the respondent. Hence, this petition to be dismissed with costs.

4. Points for Consideration of this Court:

Whether the petitioner is entitled to the relief of *ad interim* injunction, as sought for?

5. Points:

5(1) Heard both side contentions. All records perused.

5(2) According to the petitioner, the respondents to suppress the truth, have taken steps to erase the 2017 evidences. The respondent/ 1st defendant during night hours, has constructed a compound wall to hide the activities which are carried on in his property from public's eye, whereby blocking the petitioner's access to her property.

5(3) *Per contra* it is the contentions of the respondent that the respondent has not dumped mud/soil in the petition schedule property and that the the boundaries foundation were constructed long back. Further, it is also the contention of the respondent that the petitioner has filed this petition as a delay tactic to prolong the adjudication of the suit.

5(4) Before venturing further, it is necessary to point out that the principles to be followed by the Court in the matter of *ad interim* injunction. The Hon'ble Apex Court in the case of *Kishnorsinh Ratansinh Jadeja -vs- Maruti Corporation* reported in [AIR 2012 Supreme Court 1727] has reiterated the principles as follows:-

“while passing an interim order of injunction under O XXXIX R 1 & 2 CPC the court is required to consider three basic principles namely *prima facie case*, balance of convenience and inconvenience and irreparable loss and injury”

5(5) Thus, it is unambiguously clear that the petitioner must establish *prima facie* case, balance of convenience and irreparable injury in his favour to get an order of injunction.

5(6) Among the above three cardinal principles, the foremost essential requirement to be satisfied by the petitioner is *prima facie* case. Admittedly, one of the reliefs sought by the petitioner in the suit is to demarcate the petition schedule properties by fixing metes and bounds. Therefore, there is a dispute regarding boundaries of the petition schedule property and the allegation of encroachment as narrated by petitioner and disputed by the respondent. Whiles, the recitals of the documents may not reveal the true facts and in this case and it is would only be appropriate if both the petitioner and the respondents are allowed to adduce evidence as to the correctness of

the advocate commissioner's report, at the stage of trial, for better appreciation of the facts which will help this Court in effectively deciding the main dispute between the parties.

5(7) Further, the petitioner also relied upon the advocate commissioner's report filed in the present suit in support of his contention that the 1st respondent has altered the state of the petition schedule property *lis pendes* and has been illegal blocking the access of the petitioner to the petition schedule property. In this regard the pertinent point to be decided is that whether at this stage the advocate commissioner's report can be looked into to determine whether *prima facie* case is in favour of the petitioner. The report of the Commissioner is only an opinion and this Court may accept the report or reject the same. Also, the respondents have not yet been given the opportunity to exercise their right to challenge the correctness of the advocate commissioner's report, by adducing evidence at the stage of trial. As such, the advocate commissioner's report at this stage cannot be given due weight, value and credence.

5(8) In the light of the forgoing discussions this Court is of considered view that there is dispute regarding boundaries of the petition schedule property. Thus, solely based upon the documents available, this Court cannot safely arrive at a conclusion that the petitioner has proved existence of *prima facie* case, as the documents may not reveal the true facts and it would only be appropriate if both parties are allowed to adduce evidence, for better appreciation of the facts. Accordingly this point is decided in negative and against the favour of the petitioner.

6.Result:

In the result, this petition is dismissed. No order as to costs

Dictated by me to the Steno-typist, typed by her, corrected and pronounced by me in open court this the 9th day of August 2021.

Sd/-

I Additional District Munsif.,
Nagercoil.

Both side witnesses, Exhibits :- Nil

Sd/-

I A.D.M.

Draft/Fair Order

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I A.D.M., Nagercoil.

Dated. 09.08.2021.