

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.7/2021

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 and in the presence of Advocate Mr.Parameswaran for the Respondent. 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 mandatory injunction.

2. Brief contents of the petition :

In the present suit the advocate commissioner visited the petition schedule property on 18.01.2020 and filed the commission report on 07.12.2020. In the commission report it is confirmed that the compound wall constructed at 'EFGJIHDC' points are new and the access of the plaintiff to the suit schedule property from the south western portion is blocked by this compound wall, especially through the 'IJ' point from the road at western side. The plaintiff has been accessing her property through this 'IJ' point from the date of purchase of the scheduled property and this illegal blocking of the access to scheduled property has to be removed by way of mandatory injunction. Hence, this petition.

3. Brief contents of the counter :

The 1st respondent's property is bounded with clear cut compound walls on its four sides which were constructed prior to the year of 2010 itself. The present petition has been filed with false contentions and making wrong claim over the 1st respondent's property. The petitioner has filed this petition with wrong contentions of the commission report in which the 1st defendant had already filed a petition to set aside the commission report which is pending before this Honourable Court in I.A.No.8/2021. The advocate/Commissioner has stated wrong contention which are against the orders in Commission petition. Hence, this petition is to be dismissed.

4. Points For Consideration of this Court:

Whether the petitioner is entitled to the relief of mandatory injunction, as sought for?

5. Points:

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

5(2) According to the petitioner, it has been categorically pointed in the the commission report that the compound wall constructed at 'EFGJIHDC' points are new and the access of the petitioner to her property from the south-western portion is blocked by this compound wall, especially through the 'IJ' point from the road at western side.

5(3) *Per contra* it is the contentions of the respondent that they have already filed a petition to setaside the commissioner report, which was pending before this Court in I.A.No.8/2021. The advocate commissioner has stated wrong contention which are against the orders in Commission petition.

5(4) Before venturing further, it is pertinent to point that for the relief of mandatory injunction to be granted on an interlocutory application, it shall be granted only to restore the *status quo* and should not be granted to establish a new state of things, differing from the state which existed at the date when the suit was instituted. The one case in which a mandatory injunction is issued on an interlocutory application is where, with notice of the institution of the petitioner's suit and the prayer made in it for an injunction to restrain the doing of a certain act, the respondent does that act and thereby alters the factual basis upon which the petitioner claimed his relief in the suit.

5(5) In the present case, in order to substantiate the contentions of the petitioner, the learned counsel for the petitioner placed his reliance upon Ex.P.1 photographs (Nos. 17) along with CD. However, with the risk of repetition this Court would reiterate that the *ad interim* mandatory injunction should be granted only to restore the *status quo* of the state which existed at the date when the Suit was instituted. But, there are no materials available before this Court which goes to reveal the state of the petition schedule property as on the date of institution of this Suit. As such, the status of the

petition schedule property at the above said date remains ambiguous.

5(6) 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 her 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 arrive at a conclusion that the status of the petition schedule property has been altered by the respondents, as alleged by 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 oppurtunity 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 the petitioner is not entitled to the *ad interim* mandatory injunction sought for in the present petition without exhausting the respondents right to challenge the correctness of the advocate commissioner's report, by adducing evidence at the stage of trial. 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

I.A.No.7/2021

in

O.S.No.622/2010

I A.D.M., Nagercoil.

Dated. 09.08.2021.

