

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.459/2017

in

O.S.622/2010

Boopathy

... Petitioner/ Plaintiffs

And

1.Johnson

2. Arthur Rathinakumar

... Respondents/Defendants

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 Respondents/Defendants. 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 & Sec. 151 CPC for the relief of *ad-interim* mandatory injunction.

2. Gist of the petition :

The petitioner could not regularly visit his property due to his ill health, making use of his absence, the 1st respondent dumped loads of mud/soil in the south-western portion of the petitioner's property and started the stone cutting activities again, thereby trespassing into the petitioner's property. Subsequently, when the petitioner approached the police to take appropriate action against the 1st respondent, the police citing the pendency of this case instructed the petitioner to seek appropriate remedy before this Court. Hence this petition.

3. Brief contents of the counter :

The petitioner is not in possession and enjoyment over the petition schedule property. The petitioner's previous application in I.A.No.1073/2010 for ad-interim injunction was closed as the suit was ripe for trial. Thereafter, trial began in the suit. Subsequently, the petitioner has filed this petition for mandatory injunction along with an application in I.A.No. 460/2017 for appointment of an advocate commissioner. That the boundaries foundation were constructed very long back. This petition has been filed with mala fide intentions. Therefore, this petition should be dismissed.

4. Points For Consideration of this Court:

Whether the petitioner is entitled for the relief of ad-interim mandatory injunction, as prayed for?

5. Points:

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

5(2) According to the petitioner, because of his ill health, he was not able to regularly visit the petition schedule property. The respondent taking advantage of the petitioner's absence dumped loads of mud/soil in the south-western portion of the petitioner schedule property and also started the stone cutting activities again, thereby trespassing into the petition schedule 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 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 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 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 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 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.459/2017

in

O.S.No.622/2010

I A.D.M., Nagercoil.

Dated. 09.08.2021.

