

**IN THE COURT OF THE DISTRICT MUNSIF,
ERANIEL.**

Present: **Thiru. A. Maruthupandi, B.Com., B.L.,**
District Munsif, Eraniel. (F.A.C.)

Friday, the 21st day of June 2024

I.A.No.03/2019
in
O.S.No.71/2019

Powel

.. Petitioner / Plaintiff

Vs.

1. Krishnaswami
2. Sundar Raj
3. Chellammal
4. Rajan
5. Pravin Sundar
6. Mrs.Tharani
7. Manikandan
8. Mandaikadu Town Panchayat
represented by its E.O.
9. Sankar Ganesh
- 10.Vishnu
- 11.Chandrakumar
- 12.Dinesh
- 13.Selvaraj
14. Ramesh Mohan
15. Mohan Kumar

.... Respondents / Defendants

This petition is coming before me for final hearing in the presence of Mr.A.John Sundar, learned counsel for the Petitioner and Mr.K.Murugesan, learned counsel for the Respondents R1 to R3 and Mr.T.Jayakumar, learned counsel for the Respondent R4 and

Mr.R.Augustin, learned counsel for the Respondents R6, R9, R11, R12, R13, R15 and Mr.P. Kingsly Goldwin, Government Pleader for the Respondents R7 and R8 and R5, R10, R14 called absent set exparte and on perusal of the case records and having stood over for consideration till this day, this court delivered the following

Order.

This petition is filed under Order XXVI, Rule 9 and Section 151 of the Civil Procedure Code, 1908 to pass an order to issue an urgent commission to visit the suit property and to measure and locate suit properties and prepare a plan for the same marking the boundarystone available at the spot, Note and report the details of the broke open damaged thorny fence available at the spot, Note and report the details of the damaged broke open fencing stones planned in the suit properties, Note and report the details of the damages and up rooted and damaged coconut trees planted in the suit properties, Note and report the details of other kind of damages caused by the caused in the suit property, thecommissioner in request to note and report the houses and properties of D1 to 3 and theMurugan Temple lie near to the suit property and shown them in a plan prepared by the Commissioner and Such other points asked by the plaintiff and his counsels at the spot also may be noted.

2. THE AVERMENTS IN THE PETITION IN BRIEF:-

(i) The petitioner is the plaintiff in this case. The suit is for permanent injunction, damages and for other reliefs. The plaint schedule properties item No.1 and 2 originally belongs to the plaintiff's family. The plaintiff has obtained the suit item No.1 as per family partition deed dated 24.07.2002 and obtained the suit item No.2 as per the sale deed dated 24.07.2022. Before the said partition deed when the suit item No.1 was in the possession and enjoyment of the plaintiff and his brothers they have filed a suit against the Mondaikadu Town Panchayat and others as O.S.No144/1999 before this court. The suit was decreed in favour of the plaintiff and his brothers and they have recovered the encroached portion of about 0.980 sq.links on the Northern side from the Mondaikadu Town Panchayat and taken delivery of the same through court and they were in possession and enjoyment of the entire property.

(ii) After the partition deed and sale deed dated 24.07.2022 the suit properties were in the absolute possession and enjoyment of the plaintiff. Patta and tax payment stands in the name of the plaintiff. The plaintiff has planted Coconut trees and put up iron barred thorny fences on the northern and eastern side of suit item No.1. While so the defendants 1 to 3 who are

having properties, house and a Murugan Temple on the south eastern side of the suit properties colluded together along with the then E.O. of Mondaikadu Town Panchayat (the 9th defendant) and planned to form a road by encroaching a portion on the eastern side of the suit item No.1. In their attempt they mis-influenced all the other defendants. The defendants 1 to 15 who have no manner of right, title of possession over the suit properties with the ulterior intention of framing road by encroaching a portion on the eastern side of suit item No.1 came to the suit property at about 11 am on 22.04.2017 along with a JCB No.TN-75-Z-3903 owned by the 4th defendant and driven by one deceased Murugan Son of Suyampu (the Eler brother's son of the 4th defendant). Several other police men working under defendants 14 and 15 were also present.

(iii) Irrespective of the objections raised by the plaintiff, by threatening and abusing the plaintiff the Defendants 1 to 15 by violating the Law and Order and exceeding their official power with the help of said JCB broke open the iron barred thorny fences put up on the Northern and Southern side of the suit item No.1. In the course of their illegal action they have uprooted four Coconut trees aged about 7 years in suit item No.1 and damaged several other Coconut trees in the suit properties. They have driven the JCB here and there several times within the suit properties.

Further they have removed mud from the places of higher level in the suit property and filled up it on the eastern side of suit item No.1 and in the eastern pathway.

(iv) The plaintiff gave a complaint before the Mondaikadu Police Station on the same day. But no FIR was registered and no receipt also was issued on that day. Therefore the plaintiff has reported the matter to the higher officials. More over the plaintiff has filed a private complaint before the Judicial Magistrate Court, Eraniel as Crl.M.P.No.4979/2017. The Judicial Magistrate Court, Eraniel has directed the plaintiff to file a civil suit, since matter is civil in nature and closed the private complaint. Due to the illegal action of the Defendants 1 to 15 the plaintiff has sustained untold mental agony and pain and spent many sleepless nights. He was much affected both physically and mentally. The defendants 1 to 15 are liable to compensate the plaintiff for his losses and sufferings.

(v) Though the plaintiff is entitled to claim higher amount than this claim he limits his claim to a very minimum level. The plaintiff values the loss caused to the northern and eastern thorny fence along with the labour charge as Rs.35,000/- . The plaintiff values the loss, caused by the defendant by uprooting 4 coconut trees aged about 7 years and the damages caused to the other coconut trees and other damages caused to the

suit properties as Rs.30,000/- and the plaintiff limits the damages caused by the defendants as his pain and sufferings and mental agony etc. to a minimum of Rs,10,000/- . Totally the plaintiff claim only Rs.75,000/- as compensation.

(vi) Since some of the defendants are Government Employees the plaintiff has send a suit notice U/s.80 CPC dated 06.04.2019. All the defendants have received the notice . Defendants 1 to 3 send a reply through his advocate on 27.04.2019. But their reply are un true and in correct. Unless the Master and Servant relationship also the 4th defendant is liable. The other defendants have not send any reply so far. The defendants have not paid the compensation till this date.

(vii) Even now the defendants 1 to 3 and 8 are trying to form road through the suit item No.1. The plaintiff apprehends that the other defendants also may collude together and they may do it at any time. Hence, the plaintiff is constrained to file this suit. In the interest of justice an urgent commission have to be appointed to note and report the points in numerated in the accompanying application. If not the defendants may alter material pieces of evidence available at the spot and the material pieces of evidence may varnish and he may put into irreparable loss and hardship.

3. Counter filed on the side of Respondents R1 to R3 /Defendants**D1 to D3 :-**

This petition is not maintainable in law, nor on facts. All the averments stated in the petition are denied except those which are specifically admitted herein as true. The plaint schedule property stated in the plaint is against topography. As a matter of fact there was no coconut trees and thorny fence within the property of the petitioner. No damages has been caused either on 22.04.2017 on or any other dates in the property of the petitioner. No damage has been caused either on 22.04.2017 on or any other dates in the property of the petitioner. No commissioner can note and report the alleged damage since it is a utter false. However if the schedule property and the pathway lying on the eastern side is measured with the help of the qualified Taluk Surveyor, the real fact will be brought to the knowledge of this court.

4. POINTS FOR DETERMINATION:-

Whether the Petitioner/Plaintiff is entitled to the relief as prayed for or not ?

5. DISCUSSION AND ANALYSIS:-

Both side not argued. Records perused carefully.

The suit has been filed only for getting a relief of permanent injunction. “According to the relief of permanent injunction, the petitioner has to prove that he has been in possession and enjoyment over the suit schedule properties by a way of oral and documentary evidence, but advocate commissioner has only been appointing (i) to examine the witnesses (ii) to make local investigation (iii) for scientific investigation (iv) to perform a ministerial act (v) to conduct sale (vi) to examine accounts and (vii) to make partition but not “for collecting of evidence”. So that, the petitioner is not entitled for getting a relief as prayed by him.

6. DECISION:-

In the result, Petition is dismissed.

Dictated by me, typed by Steno-Typist in computer, corrected and pronounced by me in open court, on this the 21st day of June 2024.

Sd/-A.Maruthupandi,
District Munsif,
Eraniel, (FAC)

True copy

D.M.C. Eraniel.
I.A.No.03/2019
in
O.S.No.71/2019
Fair/Draft order
Dated 21.06.2024