

**IN THE COURT OF THE DISTRICT MUNSIF CUM JUDICIAL
MAGISTRATE, UTHIRAMERUR**

Present: Thiru.M.Jaisankar, M.A.,B.L.,
District Munsif cum Judicial Magistrate,
Uthiramerur.

Tuesday, the 12th day of January 2016

IA.No.158/2015 in OS.No.44/2015

B.Manibalan

. . . Petitioner/Plaintiff

/Vs/

Meenakshi Ammal Polytechnic a Unit of
M/s Meenakshiammal Trust,
Rep. by its Managing Trustee
Mr.A.N.Radhakrishnan

. . . Respondent/Defendant

This petition is coming before me for final hearing on today in the presence of Tr.A.Karunanidhi, counsel for the petitioner/plaintiff and Tr.S.Premkumar, counsel for the respondent/defendant upon hearing on both sides arguments and having stood over for consideration till this date, this court delivered the following:

ORDER

This petition is filed by the petitioner/plaintiff under order 39 rule 1 and 2 and section 151 of CPC to grant an order of temporary injunction and ad-interim injunction to that effect till the disposal of this application and render justice.

The brief averments of the petition are as follows:

2.The petitioner submit that he had filed the above suit for permanent injunction against the defendant and his father Manicka Naicker occupied the suit property before the year 1912 and he is in possession and enjoyment till his demise on 12.05.2001. He had 4 sons. After his demise they were divided the property into four shares and the west of the ABCD (O1) portion was allotted to the petitioner. The petitioner submit that he and his ancestors are in continuous

possession and enjoyment of their respective house situate in both S.No.383/1 and 383/3F. His neighbors nearly 15 families are used their possession area in northern portion of 383/1 for residential purpose and also used for as cattle shed. Therefore, the are mentioned in rough sketch as WXYZ portion. When the fact as such, the defendant moved a suit in OS.No.59/1999 against 1 and 13 others praying the relief of declaration by describing the S.No.383/3A for the extent of 7.83 acre, but the identifying the present suit property as if it covered in S.No.383/3A. But the suit in OS.NO.59/1999 on partly heard stage the defendants were set exparte and the exparte decree was passed. On the strength of alleged exparte decree the defendant filed EP in 4/2008 for eviction on him from the schedule of property.

3. The defendant already took possession 7.84 acre in survey no.383/3A on the east leaving the land in the same survey number on the west in his occupation. This portion already exist as 383/3F 0.30 Ares. But, during UDR scheme there is a mistake committed by the revenue authorities, actual measurement is 0.90 acre on the west in his occupation even it was assigned and exist as 383/3F and later it was erroneously merged with 383/3A. The defendant cannot claim more than 7.84 acre in the Survey no.383/3A. The defendant have no title and he has not got ownership for more than 7.84 acre. Hence the petition.

The brief averments of the counter filed by the respondent are as follows:

4. The respondent submit that he had filed a suit in OS.No.59/1999 and the suit was posted for trial, though the petitioner and other defendants drag on the suti for 11 years, they have not co-operated for the trial. Hence, a ex-parte order was passed against the petitioner/plaintiff on 05.11.2004. The respondent submits that the exparte decree was challenged by the petitioner/plaintiff upto Hon'ble High Court of Judicature, Madras however, the Hon'ble High Court also confirmed the exparte decree. The respondent submit that he had filed a execution petition in EP.No.4-2008 before this court which is still pending.

5. The respondent submit that the petitioner filing the above suit in OS.No.47/2015, before this court has been attempting to indirectly challenged to decree in OS.No.59/1999 before this court, which is not permissible in law, as the same is barred by res judicata. The respondent that the intention of the petitioner herein is to drag on the execution petition proceedings in OS.No.59/1999 and to prevent this defendant from enjoying the fruits of the decree in OS.No.59/1999. Therefore the respondent prayed for dismissal of the petition with cost.

6. Based on both side pleadings, the question that arise for determination is that:

i)Whether this petition is to be allowed or not?

POINT:

7. The petitioner contented that the suit property even well before the year of 1912, petitioner father had occupied and put up thatched hut and living thereon. After the demise of petitioner father his family members are living in the schedule of property. The petitioner and his ancestral are in the continuous possession and enjoyment of the respective house situated in both S.Nos.383/1, 383/3F and his neighbors nearly 15 families are used their possessed area in northern portion of the 383/1 for residential purpose and also used for cattle shed. The suit property for past several decades and the same was continued possession by the petitioner till date. In the mean while, the defendant moved a suit in OS.No.59/1999 against petitioner and 13 others praying the relief of declaration by describing the S.No.383/3A for an extent of 7.83 cents. That suit is false and identical of the portion of those 14 members actual possessed area including the present suit property is unsustainable. Due to mistake of advocate, all the defendants were set exparte and the exparte decree was passed. The decree is not on merits and not full-fledged trial. Therefore the decree was not binding the petitioner. Without valid right and title, the defendants tried to encroach and evict the petitioner in the suit property. Hence this petition.

8. On petitioner's side Ex.P1 to P25 were filed and only marked. On perusal

of documents, all the documents are xerox copies it would be proved through oral evidence in the main trial only. Genuine and validity decided in the Judgment. Ex.P1 is the xerox copy of beam notice, Ex.P2 is the xerox copy of sale deed standing in the name of Muniyammal W/o Manickam, Ex.P3 is the xerox copy of sale deed standing in the name of Paranjothi ammala, Ex.P4 is the xerox copy of sale deed standing in the name of Balarama Reddy, Ex.P5 is the xerox copy of sale deed standing in the name of Balarama Reddy, Ex.P6 is the xerox copy of sale deed standing in the name of Balarama Reddy, EX.P7 is the xerox copy of sale deed infavour of Mani, Ex.P8 is the xerox copy of adangal extract for the fazil year 1388, Ex.P9 is the xerox copy of adangal extract for the faxil year 1391, Ex.P10 is the xerox copy of adangal extract for the fazil year 1392, Ex.P11 is the xerox copy of FMB sketch, Ex.P12 is the xerox copy of assignment order, Ex.P13 is the xerox copy of assignment order, Ex.P14 is the EB card standing in the name of Manibalan, Ex.P15 to P21 are the house tax receipts standing in the name of Manibalan, Ex.P22 is the xerox copy of voter identity card of Manibalan, Ex.P23 is the Aadhar identity card of Manibalan, Ex.P24 is the xerox copy of family card of Manibalan, Ex.P25 is the rough plan.

9. The respondent on the other hand contented that this petition is barred by res judicata. The respondent got exparte decree, that exparte decree was challenged by the petitioner upto Hon'ble High Court of Judicature, Madras. However, our Hon'ble High Court confirmed the exparte decree. Thereafter it was not challenged before the Apex Court. Thus the exparte decree dated 05.11.2004 passed in OS.No. 59/1999 become final and as such it binds the petitioner/plaintiff till date the exparte decree not set aside the same value as that of a contested decree and legally binds the defendant therein. Without any valid reason, the petitioner filed this vexatious petition. The petitioner has S.No.383/3A as suit property and as shown an extent of suit property in OS.No.59/1999. The petitioner herein EP proceedings in OS.No.59/1999 and prevent this defendant from enjoying the fruits of decree in OS.NO.59/1999. Hence petition not sustainable. Hence

petition dismissed.

10. On the side of respondent they have filed 5 documents Ex.R1 to R5. Ex.R1 is the copy of execution petition in EP.No.4/2008 in OS.NO.59/1999, Ex.R2 is the copy of claim petition in EA.No.62/2008 in EP.No.4/2008 in OS.No.59/1999, Ex.R3 is the copy of counter in claim petition in EA.NO.62/2008, Ex.R4 is the copy of order in CRP.Nos.666 and 667 of 2007 on the file of Hon'ble High Court of Judicature, Madras, Ex.R5 is the copy of decree in OS.No.59/1999, Ex.R6 is the copy of encumbrance certificate.

11. The petitioner has filed a documents, non of the documents proved their right and title possession over the suit property. Already the same suit property exparte decree was passed by this Hon'ble Court. Hence this petition is 2nd round of litigation without any right and title the petitioner moved this court. The petitioner also admitted, the government only has right to evict the petitioner and also admitted the exparte decree passed and EP also filed.

12. On perusal of petition and counter there is no prima facie made out and balance of convenience also not infavour of the petitioner. Genuine and validity of the petitioner side documents would be proved only during the course of trial. The counter filed by the respondent certain allegation was proved by the substantial documents. Therefore the prima facie not made out and balance of convenience was not favour of the petitioner. No merits found to this application. Hence petition to be dismissed.

In the result, the petition is dismissed. No cost.

Dictated to the steno-typist, typed by her in computer and corrected and pronounced by me in open court in the 12th day of January 2016.

Sd/- M.Jaisankar

District Munsif cum Judicial Magistrate,
Uthiramerur.

List of petitioner side exhibits:

Ex.P1/- Xerox copy of beam notice

Ex.P2/-	Xerox copy of sale deed
Ex.P3/-	Xerox copy of sale deed
Ex.P4/-	Xerox copy of sale deed
Ex.P5/-	Xerox copy of sale deed
Ex.P6/-	Xerox copy of sale deed
Ex.P7/-	Xerox copy of sale deed
Ex.P8/-	Xerox copy of adangal extract for the fazil year 1388
Ex.P9/-	Xerox copy of adangal extract for the faxil year 1391
Ex.P10/-	Xerox copy of adangal extract for the fazil year 1392
Ex.P11/-	Xerox copy of FMB sketch
Ex.P12/-	Xerox copy of assignment order
Ex.P13/-	Xerox copy of assignment order
Ex.P14/-	EB card
Ex.P15/-	House tax receipt
Ex.P16/-	House tax receipt
Ex.P17/-	House tax receipt
Ex.P18/-	House tax receipt
Ex.P19/-	House tax receipt
Ex.P20/-	House tax receipt
Ex.P21/-	House tax receipt
Ex.P22/-	Xerox copy of Voter Id card
Ex.P23/-	Xerox copy of Aadhar identity card
Ex.P24/-	Xerox copy of Family card
Ex.P25/-	Rough plan.

List of defendant side exhibits:

Ex.R1/-	Copy of execution petition in EP.No.4/2008 in OS.NO.59/1999
Ex.R2/-	Copy of claim petition in EA.No.62/2008
Ex.R3/-	Copy of counter in claim petition in EA.NO.62/2008
Ex.R4/-	Copy of order in CRP.Nos.666 and 667 of 2007
Ex.R5/-	Copy of decree in OS.No.59/1999
Ex.R6/-	Copy of encumbrance certificate.

Sd/- M.Jaisankar

DM-cum-JM,
Uthiramerur.

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