

IN THE COURT OF MUNSIF, VADIPATTI, MADURAI DT.

Present: Tmt. S. Vengadalakshmi, M.L.,

District Munsif (FAC)

Date : 13.09.2023

I.A. No.02/2023 in O.S.30/2023

1. R. Kathirvel, Kadupatti.

--- Petitioner/Plaintiff

//Versus//

1. The Government of Tamilnadu,
Rep. through the President, Kadupatti.
2. The Government of Tamilnadu,
Rep. through
The Block Development Officer,
Vadipatti.
3. The Government of Tamilnadu,
Rep. through
The Tahsildar, Vadipatti.
4. The Government of Tamilnadu,
Rep. through
The District Collector,
Madurai.

--- Respondents/Defendants

This petition is came up before this court and Advocate Thiru. M. Vellaichamy appeared for the Petitioner/Plaintiff and the Advocate Thiru. Parthasarathy Government Pleader appeared for the Respondents/Defendants and this petition came before me for final hearing on 12.09.2023, Upon hearing the arguments advanced on both side counsels, upon perusing the available material records which are having stood over for the consideration of this court till this day, today this court delivered the following...

ORDER

1. This petition is filed u/o. 39, Rule 1 and 2 of C.P.C seeking for the Temporary Injunction as against the Respondents/Defendants from interfering into the peaceful possession and enjoyment of the petition mentioned property.
2. **BRIEF CASE OF THE PETITION:** The petitioner is the plaintiff in the suit and The suit is filed for the Relief of Permanent Injunction, the petition mentioned propoerty vide Old Survey No.426/1,2,3 part and New Survey

No.566/33, and to some extent of Survey No.566/37 are belonged to father of the petitioner and he was granted with Patta and enjoying the property. Due to election motive the 1st Respondent president of local body is making illegal attempt to evict few of the houses in the said locality. Hence this suit is filed and the petition is also filed for the relief of temporary injunction.

3. **BRIEF CASE OF THE COUNTER:** The case of the petitioner is not true and petition is liable to be dismissed. The Petitioner was allotted with patta only for the I item in the schedule but illegally encroached the Survey No. 566/37 which is mentioned in the petition as the II item of property. the petitioner do not have any right over survey No. 566/37. As the public toilet was constructed in the Survey No.566/37, and the same was removed later. Hence, the present petition is liable to be dismissed.
4. Counter of Respondent No. 1 filed and Respondent No.2 to Respondent No.4 not filed separately. But, only adopted counter of Respondent No.1.
5. Point to be decided is whether the present Temporary Injunction as prayed for shall be granted or not?
6. Heard both side and considered Documents filed by both side and also considered all the relevant materials. On the side of Petitioner P1 to P14 was marked and On the side of Respondent R1 to R5 was marked.
7. The petitioner is seeking for relief on 2 item of property arrived in schedule out of which R1 has not raised anything about first item of property vide Survey Number. 566/33 . Upon considering the averments in the Counter it is found the Respondent side has also admitted that the Petitioner is the patta holder for the Survey No. 566/33. Hence, no objection raised by the respondents side as far as this item No.1 is concerned.
8. As far as the Item No.2 is concerned, the Respondents side Government Pleader reported that unauthorised construction only removed at that time oral submission. But, counsel for the petitioner would submit that he has constructed toilet by Government Scheme and hence the same shall be taken into consideration.

9. Upon considering plaint Document No.14 which is the photograph of the petitioner is found to establish that toilet constructed in Government Scheme allotted. But the same was not objected by the learned Government Pleader.
10. But, counsel for the petitioner would submit that he has constructed toilet in the alleged area of 225 sq.ft within the Survey No. 566/37 which is natham land as per the category and that toilet was also constructed by availing grant of the Government in a Scheme for the same. Without considering the title and possession of the said area, Government scheme grant could not be obtained. Hence the same to be Taken into consideration.
11. Upon considering plaint Document No. 14 is found to establish that toilet constructed in Government Scheme allotted. This fact was not objected by the Learned GP and accepted the removal of toilet , but stated only that the toilet is the public toilet constructed by the local body. That point shall only be decided at the trial. Hence needless to go deep into that fact.
12. As far as the Respondent side Documents are concerned Ex.R.1 Adangal register Extract would show that the survey no. 566/37 is categorized only as Natham, as claimed by the Petitioner. Ex.R2. shows the list of Encroachment wherein the wife of the present petitioner was arrived as Sl.no.3. the mode of Encroachment is given in the list as Thatched shed. But the present petitioner has claimed for the toilet constructed by himself.
13. Counter of the Respondent just mentioned in the counter that the public toilet constructed by local body was only removed later and no toilet constructed by the petitioner was removed by the respondents. The counter contents were found inconsistent with the documents preferred by the Respondent side. As per ExR2 one sumathy wife of kathirvel arrived as encroacher, but As per the Ex.R.4 Acknowledgment card found served for the Petitioner Kathirvel. That notice was found for the husband instead of the encroacher or what is stands unexplained. It shows that the notice was sent only as formality with an intention that shall not be served on the party at all.
14. Ex.No.R3 found unconnected as the request letter doesn't written by the

Encroacher but the present petitioner and the Respondent has also failed to establish the nexus of the present petitioner as the representation does not mention anything as if the same was filed on behalf of his wife or someone. Originally the adjacent land patta stands in the name of the father of the petitioner. Hence why the encroacher is fixed as the wife the petitioner is vague. R5 Photo is also vague and this court could not link the same with the facts.

15. The case of the petitioner is that the Respondents have removed certain part of construction after getting the knowledge of the pendency of the Suit. If it is so, then the attitude is highly condemnable. Upon perusal the Learned GP has entered appearance on 20.4.2023. and counter filed on 1.7.2023. But documents were only filed on 12.9.23 found to be inconsistent with the contents of the counter dated 1.7.23. But the petitioner has not established any specific date for the alleged violative steps taken by the Respondents even after getting the knowledge of the pendency of the suit proceedings. Hence this court has not gone deep into those facts. It is also made clear that if at all anything happened in violation to the right of petitioner during pendency of this petition, that infringement of right shall be agitated in the separate petition for the same.

16. As far as the present application for the temporary injunction is concerned, Plaintiff is filed for the relief of Permanent Injunction and the rejection of the present petition may lead to the suit to become infructuous. As the allegation of persistent threat for the possession of the petitioner is found from the Respondent side documents itself this court has satisfied on the prima facie case. As the Respondents have not objected the possession of the petitioner in the petition mentioned property and first item is found patta land and the second item is not established as separable from the other item, this court has found that the balance of convenience also stands in favour of the petitioner. Irreparable loss could also be inferred from the given facts and circumstances in support of the documents.

17. In view of the documents and pleadings the right of petitioner if any in concerned with the Item No.2 in the petition mentioned property to the given extent shall also necessarily be protected.

18. In the result, this petition is allowed, by granting temporary injunction in favour of the petitioner by restraining the Respondents and their men from interfering in the peaceful possession of petitioner in the petition mentioned property till the disposal of the main suit.

19. Accordingly, this IA is disposed as allowed.

Dictated to the Steno Typist typed by her directly on the computer, corrected and pronounced by me in the court this the 13th day of September, 2023.

Sd/-
S. Vengadalakshmi
District Munsif(FAC)
Vadipatti.

1) Petitioner side evidence : Nil

2) Petitioner side documents:

Exhibit - P1	31.03.2023- Patta stands in the name of Petitioner's father - Xerox Copy
Exhibit - P2	03.04.2023 - House Tax receipt stands in the name of Petitioner's father - Xerox Copy
Exhibit - P3	Electricity Bill stands in the name of Petitioner's father - Original
Exhibit - P4	FMB Sketch in respect of Survey No.426 - Xerox Copy
Exhibit - P5	FMB Sketch in respect of Survey No.566 - True Copy
Exhibit - P6	01.04.2023 - Guideline Value for the suit property - Xerox Copy
Exhibit - P7	01.04.2023 - Guideline Value for the suit property - Xerox Copy
Exhibit - P8	Death Certificate of Petitioner's father - Xerox Copy
Exhibit - P9	Aadhaar Card of Petitioner - Xerox Copy
Exhibit - P10	Family Card - Xerox Copy
Exhibit - P11	Rough Sketch of Suit Property
Exhibit - P12	19.04.2023 - Complaint against the 1 st Respondent made by the Public, Published in Tamil Newspaper - Xerox Copy
Exhibit - P13	13.03.2023 - Complaint sent to the Hon'ble Chief Minister, Tamilnadu

	against the 1 st Respondent - Xerox Copy
Exhibit - P14	Photographs of Petitioner in petition mentioned property with CD

2) Respondents side evidence and documents: Nil

4) Respondents side documents:

Exhibit - R1	Adangal – Xerox Copy
Exhibit - R2	List of Area Encroachers – Xerox Copy
Exhibit - R3	Requisition letter- Original
Exhibit - R4	Acknowledgment Card -Original
Exhibit - R5	Photograph

Sd/-
S. Vengadalakshmi
District Munsif(FAC)
Vadipatti
TRUE COPY

DISTRICT MUNSIF COURT
Vadipatti
FAIR ORDER
Date : 13.09.2023
I.A. No.02/2023
in
O.S. No.30/2023