

IN THE COURT OF DISTRICT MUNSIF, VADIPATTI, MADURAI DT.**Present** : Thiru. M.P. Ramkishore, B.E., BL., (Hon's)

District Munisf, Vadipatti

Dated 20th day of August 2024**IA. No.476/ 2020****In****O.S. No.53 / 2020**

D. Ungusamy,
S/o. Late. Durairaj,
Vadipatti Taluk, Madurai District.

---- *Petitioner/ Plaintiff****//Versus//***

1. *M. Muthu (Died),
S/o. Late. Palaniyandi Ambalam,
Vadipatti, Madurai District.
2. M. Murugesan,
S/o. Late. Palaniyandi Ambalam,
Vadipatti Taluk, Madurai District.
3. M. Malayalam,
S/o. Late. Palaniyandi Ambalam,
Vadipatti Taluk, Madurai District.
4. M. Moorthy,
S/o. Muthu,
Vadipatti, Madurai District.
5. M. Arun,
S/o. Muthu,
Vadipatti, Madurai District.

6. M. Prabhu,
S/o. Muthu,
Vadipatti , Madurai District.
7. *Padma @ Padmavathy,
W/o. Late. M. Muthu,
Vadipatti, Madurai District.

****Amended as per order in IA No.412/2022, dated 03.02.2023.***

---- Respondents / Defendants

This petition was filed before this Court on 03.08.2020 coming before me for final hearing on 20.08.2024 Advocate Thiru. S. Anand Chandrasekar appeared for Petitioner / Plaintiff, Advocate Thiru. V. Arichandran appeared for the Respondents / Defendants. Upon perusing the available material records, today this Court has delivered the following....

ORDER

The petitioner had filed this petition under Order XXXIX Rule 1 & 2 of CPC to grant temporary injunction restraining the respondents, their men, agents or any other person acting under them from in any manner interfering with petitioner's peaceful possession and enjoyment of the petition property pending disposal of the suit.

2. GIST OF THE PETITION:

The petitioner is the plaintiff in the main suit. The main suit was filed for declaration and consequential injunction. The petition averments was that, the petition property originally belonged to Karuppi @ Karuppayammal. Later the petitioner's mother Sornathammal purchased the property and after her death, her properties were partitioned and the suit property was allotted to the petitioner's share. The property located to the north of petition property was allotted to the petitioner's brother, which was originally a 5 feet pathway and now converted as road. The petition property had old survey no. 1077/2, it was then subdivided as 1077/2A and 1077/2B. Later again survey number was renumbered as 1746/63 and the patta was given to the petitioner. The respondents did not raise any objection for issuing patta to petitioner. The respondents without any right over the petition

property have trespassed into the property on 28.07.2020 and heaped soil. The petitioner informed the incident to police. The petitioner then fenced the property and put up a tin shed. On 30.07.2020, the respondents again tried to damage the shed and fence. The petitioner had prima facie case, and balance of inconvenience in his favour. Further if order was not passed, it will cause irreparable loss. Hence, the petitioner filed this suit and this petition seeking temporary injunction.

3. **GIST OF THE COUNTER:**

In the counter, the respondents denied the entire petition averments. The respondents contended that the petition property was a lane between two houses and it was joint family property of the respondents. The petition property was in the possession and enjoyment of these respondents. It was not allotted to the petitioner by partition as pleaded in the plaint. The petitioner had unlawfully obtained patta for the petition property. The respondents did not cause any disturbance to the petitioner but the petitioner alone was causing disturbance to the respondents. The petitioner had filed this petition without any right, hence the respondents prayed to dismiss the petition along with cost.

(The counter filed by 2 to 6 respondents was adopted by 7th respondent).

4. **THE POINT FOR CONSIDERATION IS THAT:** Whether the petition is liable to be allowed or not?

- i. Records perused. The petitioner had filed the main suit seeking for the relief of declaration and permanent injunction. This petition is filed for temporary injunction to restrain the respondents and their men from disturbing the plaintiff's enjoyment in petition property. The case of the petitioner is that he had the title and possession for the petition property. The respondents deny the petitioner's title and possession.
- ii. In order to substantiate the pleadings both the side did not file any documents.

iii. Regarding the relief of temporary injunction *our Hon'ble High Court in Ms. Archana Bansal vs. NEPC India Limited and Another, (2007) 6 MLJ 648* has held that,

T2. Grant or refusal of temporary injunction is subject to the following principles:

(a) Prima facie case of plaintiffs legal right

(b) Balance of convenience in his favour

(c) Whether he would suffer irreparable injury if injunction is not granted.

These conditions have to be satisfied and proof of any of them is not by itself sufficient to obtain a temporary injunction. Prima facie case means that there exists a strong probability that the petitioner has an ultimate chance of success in the Suit. Balance of convenience is the principle by which the Court weighs and balance the mischief or inconvenience to either side. Irreparable injury means a substantial injury which cannot be adequately compensated for in damages.."

Thus as directed by our Hon'ble High Court, to obtain the relief of temporary injunction, the petitioner must prove all the above mentioned principles, that he has prima facie case, balance of inconvenience and not granting temporary injunction would result him irreparable loss and injury.

iv. As this petition is for temporary injunction, the possession of the petitioner in the petition property, needs to be proved. To prove the possession, no document has been adduced by the petitioner with the petition. Whereas the petitioner filed his affidavit stating that the petition property belonged to him and he was in possession. But, the defendants denied the above contention of the petitioner and they claim the title and possession of the petition property. Since no documents were filed with this petition regarding possession, the petitioners averments were not proved. Since the respondents denied the title and possession of the petitioner, the petitioner can only prove their case by letting in evidence but no such evidence was let in by the petitioner. Thus, this court concludes that the petitioner did not show that prima facie case exist for granting temporary injunction.

v. The petitioner has not let in evidence to substantiate his pleadings, to show that balance of inconvenience exist. Thus, in such circumstance this court cannot find any balance of inconvenience, in favour of the petitioner/plaintiff. Similarly, the petitioner had not let in any piece of evidence to show that if the injunction is not granted, it would cause irreparable loss to the petitioner. Thus, applying the above dictum in the case on hand and from the foregoing discussions, it can be seen that the petitioner had not established prima facie case, balance of inconvenience and irreparable loss. Hence, injunction would not be granted.

5. In the result, this petition is dismissed. No costs.

Directly dictated to the Stenographer and computerized error checked and pronounced in the open court on *20th day of August 2024*.

Sd/-
M.P. Ramkishore,
District Munsif,
Vadipatti.

Petitioner side evidence and documents: Nil

Respondents side evidence and documents: Nil

Sd/-
M.P. Ramkishore,
District Munsif,
Vadipatti.

TRUE COPY

DISTRICT MUNSIF COURT
Vadipatti
Fair Order/~~Draft Order~~
IA. No.476/2020
In
O.S. No.53/2020
Date : 20.08.2024