

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

District Munsif, Vadipatti

Dated 31st day of July 2024**IA. No.578/2022****In****O.S. No.136/2022**

Hari Hara Bose,
S/o. Ayyakannu Thevar,
T. Vadipatti Taluk, Madurai.

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

Nagalakshmi,
W/o. Krishnan,
Alanganallur Post, Madurai.

---- *Respondent / Defendant*

This petition was filed before this Court on 16.09.2022 coming before me for final hearing on 31.07.2024 Advocate Thiru. K.K. Ravie appeared for Petitioner / Plaintiff and Advocate Thiru. M. Thiyagarajan appeared for Respondent / Defendant. 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 petition mentioned property was a land situated at survey No.496/2A1C, Kulasekarankottai Village, Vadipatti. The petitioner pleaded that, the petition property belonged to his father. The respondent without any right over the petition property, was falsely claiming right over the property, attempting to trespass into the property and made encroachment. Hence, this petition was filed seeking temporary injunction.

3. GIST OF THE COUNTER:

The respondent adopted the written statement as counter. The respondent denied the entire petition and stated that the petition property was in the possession of the respondent's ancestors for more than forty years. The petitioner did not file any document to prove his possession and enjoyment. Hence, this petition was liable to be dismissed.

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 permanent injunction. This petition was filed for temporary injunction to restrain the respondent and their men from disturbing the plaintiff's enjoyment in petition property. The case of the petitioner is that, his father hold the title and the petitioner was in possession of the petition property. In the petition property, the respondent falsely claiming right, attempted to trespass into the property and made encroachment. Thus, the petitioner filed this petition for temporary injunction. The respondent denied the entire petition and contended that he was in possession of the property.

ii. In order to substantiate the pleadings, both the sides have not filed any document.

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,*

"12. 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 the petitioner 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, the petitioner had pleaded that the petitioner was in possession of the petition property. But, no documents were filed with the petition to prove the possession of the petitioner. Further, to prove the balance of inconvenience, the petitioner had pleaded that the petition property was vacant land, the respondent by falsely claiming right over the

property, tried to trespass into the petition property and made encroachment. But, the petitioner did not file any document to substantiate the encroachment made by the respondent. On the other hand, the respondent claim that the property was in his possession but no document was filed to substantiate the claim. Further, the petitioner did not even mention the date on which the respondent made trespass into the petition property. Thus, in such circumstance this court cannot find any balance of inconvenience, in favour of the 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, from the foregoing discussions the petitioner has not proved the necessary ingredients to obtain temporary injunction. Hence, temporary 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 ***31st day of July 2024***.

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

Petitioner side evidence and documents: Nil

Respondent side evidence and documents: Nil

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

//TRUE COPY//

DISTRICT MUNSIF COURT
Vadipatti
Fair Order/~~Draft Order~~
IA. No.578/2022
In
O.S. No.136/2022
Date : 31.07.2024