

IN THE COURT OF DISTRICT MUNSIF, THIRUVADANAI.

PRESENT: Thiru.D.Manishkumar, B.Sc., B.L(Hons).,
District Munsif,
Thiruvadanai.

Thursday, the 20th day of October 2022

IA.No.106/2022

in

OS No.54/2022

Mariyasenkol

... Petitioner / Plaintiff

Vs

Kaarmelmeri

...Respondent / Defendant

This petition came up on 02.09.2022, in the presence of Mr.K.Ramesh - advocate for the Petitioner, and the presence of Mr.ARM.Suresh - advocate for the Defendant, upon perusing the case records and having stood over for consideration till this day, this court hereby delivered the following...

ORDER

The Plaintiff has filed the petition under Order 39 Rule 1&2 and Section 151 C.P.C. to pass an order granting injunction restraining the Petitioner/Plaintiff from disturbing the peaceful possession and enjoyment of the suit properties till the disposal of the suit.

1. **The averments of the Petitioner:-**

The suit property is the ancestral property of the Petitioner's father. The Petitioner's Father has two names vide Jebamaalai and Kattimuthu. The Petitioner has been possession in of the suit property for more than 60 years by putting a hut on it and leaving the west side vacant. After getting a settlement in the Petitioner's name he has mutated the patta in his name and has been enjoying the suit property. The SLR is also in the Petitioner's name has detail as to the hut house and vacant land.

The Respondent's hut house was on the west of the Petitioner's property. On April 2022 the Respondent has demolished his hut house and stated construction urgency in his property along with the west side property of Petitioner. When the Petitioner was out of the station. The Respondent also ignored when the Petitioner raised this issue before him and consequently the Petitioner approached village people as to the issue and the Respondent ignored them as well. Further, the Petitioner has given a complaint before the Thondi Police station and the police personals have advised to sort out the issue by measuring the land Respondent also agreed to the same and gave a word to remove the encroachment. However ironically, the Respondent started the construction by encroaching 12 feet East to West and 24 feet South to North, again the same has been reported to the police station and now they Instructed to go for Civil suit. Hence prayed to grant a temporary injunction.

2. **The averments of the Respondent(Adopted written statement as a counter):-**

The Respondent admitted that the suit property was located as mentioned in the petition. The suit property belonging to the Petitioner through his father is false. The Petitioner has to prove that his taken has two names. The Respondent denied that the Petitioner has been possession in of the suit property for more than 60 years by putting a hut on it and leaving the west side vacant. After getting a settlement in the Petitioner name has mutated patta in his name and has been enjoying the suit property. The Respondent objected that The Respondent's hut house was on the west of the Petitioner's property. On April 2022 the Respondent demolished his hut house and stated construction urgency in his property along with the west side property of Petitioner. When the Petitioner was out of the station.

The Respondent also ignored when the Petitioner raised this issue before him and consequently the Petitioner approached village people as to the issue and The Respondent ignored them as well. Further, the Petitioner has given a complaint before the Thondi Police station and the police personals have advised to sort out the issue by measuring the land Respondent also agreed to the same and gave a word to remove the encroachment. However ironically, the Respondent perusal the construction by encroaching 12 feet East to West and 24 feet South to North.

The suit property originally belongs to the mother-in-law of Respondent namely marry and she had executed a gift settlement on 30.07.2021 in favor of her son also the husband of the Respondent. The suit property is survey No.393 Old No.27/1 NH However the Respondent has been constructing in survey No.435 Old No.65/15 Natham land. The description of the suit property is wrong. Hence prayed to dismiss the petition.

3. I have heard the arguments at length from both sides and perused the records carefully.
4. **Point for the determination:-**
Whether the Plaintiff is entitled to get an order of temporary injunction against the Defendant?
5. Based on the perusal of the bundle, it shows that the Petitioner has filed a suit for a declaration, Recovery of possession, and Mandatory injunction against the Respondent. Now moved this petition to seek a Temporary injunction against the Respondent until the disposal of the main suit. The Petitioner states that the suit property belongs to him and the Defendant has encroached on the suit property and started construction. To substantiate his case, marked Ex.P1 to Ex.P4. On the other hand, Respondent has stated that the suit property Survey No. 66/2 is but she has been constructing in Survey No.65/15 Natham land. Further denied that they had encroached on the petitioner's property. To substantiate their case marked Ex.R1 to Ex.R5.
6. As is evident from the aforesaid stands of the parties, the Petitioner claims the suit property which contains Survey No.66/2 belongs to him and the same had been encroached by the Defendant, but the Defendant stated that she has been constructing in her property which contains a Survey No.65/15, not in the suit property. It is apposite to be clarified here that at the stage of disposal of an interim injunction application, the question of right in the disputed land cannot be gone into by the court

nor the same is relevant for purposes of disposal of the interim injunction application in as much as the rival claims as to right and title of the parties in the suit property can only be decided at the trial and not at the stage of disposal of this interim injunction application. An interim injunction application has to be decided based on the prima facie possession of the parties over the disputed land.

7. It is a settled principle of law that while deciding the Order 39 Rule 1 and 2 petitions, the court has to consider the following;
 - (I) Whether the Plaintiff has made out a prima facie case;
 - (ii) Whether the balance of convenience is in favour of the Plaintiff; and
 - (iii) Whether the Plaintiff will suffer irreparable loss or injury if an order of injunction is not passed.

8. The Petitioner herein stated the suit property belongs to him and he has been in the possession of the suit property to prove and to his possession over the suit property, he marked a patta vide No.604 which is in the Petitioner's name as Ex.P2 and SLR along with FMB sketch marked as Ex.P1. The Petitioner stated that in April 2022 Defendant had encroached on the suit property and to sort out the issue the Petitioner had made a complaint before thondi police station and the same is marked as Ex.P3. Further stated that on 25.08.2018. The Petitioner also marked the photos of the suit property as Ex.P4.

9. The Respondent has marked the patta vide No.435 as (Ex.R1), gift deed dated 30.07.2021 as (Ex.R2), sitta as (Ex.R3), house tax receipt as (Ex.R4), and Patta mutation order as (Ex.R5). On meticulous perusal of the said documents, those are concerning only the property having Survey No.65/15 which is not the subject matter of the present suit.

10. Based on the perusal of the documents Ex.P2 Patta vide No.393 for the suit property and Ex.P1 SLR and FMB sketch produced by the Petitioner and affidavit by the

Petitioner, this court is satisfied that the Petitioner is prima facie in the possession of the suit property and the Petitioner has made out a clear prima facie case in his favor on the basis of her possession over the suit property. In the event of any construction on the suit property, it is the Petitioner who would stand deprived of his use and occupation of the disputed property and not the Respondent, hence the balance of convenience also lies in favour of the Petitioner who is on a stronger footing than the Respondent to get the relief of temporary injunction. Since there is a chance of further construction on the suit property, the interference of this court is necessary to protect him from irreparable injury till the legal right claimed by him in the Suit is established.

11. In the light of the observations made in the preceding paragraphs, the Petitioner has succeeded in establishing in his favour a clear prima facie case, the balance of convenience and irreparable injury, necessary for the grant of interim injunction, against the Respondent. Therefore in the interest of justice, this court is inclined to allow this petition, and the Respondent is restrained during the pendency of the present civil suit from interfering in the peaceful possession of the Petitioner over the disputed suit property.

As a result, this petition is allowed. No cost.

Dictated to the typist, transcribed by her, corrected, and pronounced by me in open Court, this the 20th day of October 2022.

(Sd/Tr.D.Manishkumar)
District Munsif,
Thiruvadanai.

Petitioner Side Witness and Documents :- Nil -

Respondent side Witnesses and Documents : -Nil-

(Sd/Tr.D.Manishkumar)
District Munsif,
Thiruvadanai.