



IN THE COURT OF DISTRICT MUNSIF, THIRUVADANAI.

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

Thursday, the 19th day of January 2023

IA.No.491/2022

in

OS No.141/2022

Mohamed Aaribin

... Petitioner/Plaintiff

Vs

1. Nainaar Kaaja
2. Samsu

... Respondents/Defendants

This petition came up on 07.01.2023, in the presence of Mr.K.Sasikumar, advocate for the Petitioner, and Mr.B.Karthikeyan, advocate for the Respondents, 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 restrain the Petitioner/Plaintiff from disturbing the peaceful possession and enjoyment of the suit properties till the disposal of the suit.

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

The suit property and the property situated south of the same initially belong to Rawthar Naina. Who had enjoyed those properties by having initially hut and subsequently constructed a titled house from 1920, also by leaving



space around the said house? The Rawthar Naina was issued with a Samasthana patta for his entire properties including suit property. After the demise of Rawthar Naina, his only son Seenimohamed inherited those properties. The said properties were subdivided and survey No.72/354 was allotted for south-side properties and a settlement patta was also issued in the name of Seenimohamed. After the demise of Seenimohamed his legal heir the Kaasara bheevi, Noorjahan bheevi, Rasool bheevi, and Mohamed Ismail inherited the properties. The said Mohamed Ismail had given hiba which is known as oral gift in respect of his share to his sisters in the year 1990.

The G.R. Plot patta vide No.196 was issued in the name of Kaasara bheevi. Later the said south side property was sold to the Petitioner on 13.11.2000 for valid construction. The Petitioner has been constructing a house on the said property by leaving space on the North side. Since Petitioner's brother had given 5 feet in the property survey No.72/355, the Petitioner also constructing a home along it. The Respondents are in no way connected to the suit property. On 28.11.2022 the Respondents disturbed the Petitioner's construction by claiming the ownership of the suit property and also threatened to encroach on the same. The said disturbance of Respondents was reported to the police station as well. Further, the Petitioner has filed a petition before the Revenue divisional officer to correct the inconsistent measurements of the suit property in the Revenue records. The Petitioner will suffer an irreparable loss if the Respondents are not restrained by interim injunction. Hence prayed to allow this petition.

2. **The averments of the Respondents:-**

The Petitioner has not clarified the suit property as to which is the suit



property and is south side property and its survey numbers. Further, the Respondents denied all the allegations and facts leveled in the petition. Further, the Petitioner has not established the location of the suit property, whether it is situated on the southern side (or) North side. The Petitioner is in no way connected to the suit property and he is not in the possession of the same. Further, the Petitioner had admitted that there is an inconsistency in the measurement of the Revenue documents compared to the Petitioner's vendor's documents. The Petitioner has been trying to hide the encroachment made by him in the suit property through this petition. Hence the Petitioner has mentioned irrelevant facts in this petition. Furthermore, the Petitioner has not mentioned the details of to measurement of the suit property. Hence, prayed to dismiss this petition.

3. I have heard the arguments at length from both sides and perused the records carefully.
4. **Point for the determination:-**
Whether the Petitioner is entitled to get an order of interim injunction against the Respondents?
5. Based on the perusal of the bundle, it shows that the Petitioner has filed a suit for a declaration and Perpetual injunction against the Respondents. Meanwhile moved this petition to seek an interim injunction against the Respondents until the disposal of the main suit. The Petitioner state that he bought the suit property on 13.11.2000 for the valid construction. The Petitioner has been constructing a house on the said property by leaving space on the North side. Since Petitioner's brother had given 5 feet in the property survey No.72/355, the Petitioner also



constructing a home along it. The Respondents are in no way connected to the suit property. On 28.11.2022 the Respondents disturbed the Petitioner's construction by claiming the ownership of the suit property and also threatened to encroach the same. The said disturbance of Respondents was reported to the police station as well. Further, the Petitioner has filed a petition before the Revenue divisional officer to correct the inconsistent measurements of the suit property in the Revenue records. The Petitioner will suffer an irreparable loss if Respondents are not restrained by interim injunction. To substantiate his case Petitioner had marked House tax receipts in the name of Rawthar Naina - Original as Ex.P1, Notice of demand for house tax - Original as Ex.P2, Tax fixation form by Assistant settlement officer - Original as Ex.P3, Settlement general enquiry report - Original as Ex.P4, Tax receipts in the name of Kaasara bheevi - Original as Ex.P5, Electricity bill receipts in the name of Kaasara bheevi - Original as Ex.P6, Patta vide No.196 in the name of Kaasara bheevi as Ex.P7, Sale deed dated 13.11.2022 executed in favour of Petitioner as Ex.P8, Tax receipts in the name of Petitioner - Original as Ex.P9, Complaint before police station Thondi - Xerox as Ex.10, Petition was given before Revenue divisional officer - Xerox as Ex.11, Nilavudamai Kuripedu as Ex.P12, Property tax receipts in the name of Seenimohamed as Ex.P13, Property tax receipts in the name of Kaasarabheevi as Ex.P14, Certified copy of Patta vide No.196 in the name of Kaasarabheevi as Ex.P15, Certified copy of "A" Register as Ex.P16.

6. On the other hand, the Respondents stated that the Petitioner has not clarified the suit property as to which is suit property and is south side property and it's survey numbers. Further, the Respondents denied all the allegations and facts leveled in the petition. Further, the Petitioner has not established the location of the suit property, whether it is situated on the Southern side (or) North side. The



Petitioner is in no way connected to the suit property and he is not in the possession of the same. Further, the Petitioner had admitted that there is an inconsistency in the measurement of the Revenue documents comparing to the Petitioner's vendor's documents. The Petitioner has been trying to hide the encroachment made by him in the suit property through this petition. Hence the Petitioner has mentioned irrelevant facts in this petition. Furthermore, the Petitioner has not mentioned the details as to measurement of the suit property. To substantiate their case Respondent marked Photographs of the suit property - Original as Ex.R1, Sale deed executed in the year 1977 by Noorjahan bheevi - Original as Ex.R2, Patta vide No.474 in the name of Noorjahan bheevi - Original as Ex.R3, Water tax book in the name of Noorjahan bheevi - Original as Ex.R4.

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 favor of the Plaintiff;
and
 - (iii) Whether the Plaintiff will suffer irreparable loss or injury if an order of injunction is not passed.

8. As is evident from the aforesaid pleadings of both parties, it is clear before this court that both parties are claiming title and possession over the suit property. It is to be clarified here that at the stage of disposal of an Interim injunction application, the question of rights in the disputed land can not be gone into by the court nor the same is relevant for purposes of disposal of the Injunction



application as much as the rival claims as to the right and title of the parties in the disputed land can only be decided at the trial and not at the stage of disposal of the Interim injunction application. Further, it is trite law that an interim injunction application has to be decided based on the Prima facie possession of the parties over the disputed land which is one of the essential criteria to decide the application.

9. In the present case, the burden lies on the Petitioner to prove that he has been in the Prima facie possession over the suit property and to discharge the same he relied upon title deed and revenue record in the name of Petitioner and as well as his previous owners as to suit property which are marked here as stated above. On perusal of the same, this court can also able to see the name of the Petitioner and survey No.72/354 which are reflected there. On the other hand Respondents have denied the possession and title of the Petitioner over the suit property and to substantiate the same marked the title document and revenue records in the name of one Noorjahan bheevi. The learned counsel for the Petitioner had objected to the documents in the name of Noorjahan bheevi which are marked by the Respondents' side as not admissible since those are beyond their pleadings. On perusal of the Respondents' side counter, it is found that the Respondents have denied and merely answered the allegations leveled against them by the Petitioner, but have not established the fact of title and possession over the suit property and the same are vague and ambiguous.
10. Further, As stated by the Petitioner's counsel the Respondents have not pleaded the facts as to the suit property survey number is 72/353, and the same belongs to the Noorjahan bheevi. It is a settled principle of law that if the pleadings did



not contain the necessary foundation for raising an appropriate issue, any amount of evidence in that regard, however excellent the same may be, will be futile. Since there is no pleading in this regard and the documents Ex.R2 to Ex.R3 which are adduced by the Respondents cannot be looked into by the court. Furthermore, as per the perusal of Petitioner's side documents, this court is satisfied that a Prima facie case has been made out by the Petitioner which needs adjudication at the trial. However, the learned Counsel for the Respondents argued that the documents produced by the Petitioner to establish his title and possession are inconsistent with measurements of the property vide survey number 72/354. On perusal of the Petitioner's side documents, this court also can able to find that the measurements differ from one document to another. However, the boundary dispute and the question as to whether the suit property falls within the ambit of survey numbers stated by both parties is a matter of trial and the same has to decide after a full fledged trial with the aid of the advocate commissioner if required as well.

11. Therefore, Based on the affidavit and documents, the Petitioner has made out a clear Prima facie case in his favor on the basis of his Prima facie possession over the suit property. Further on perusal Ex.P10 complaint copy, this court finds that there is a disturbance to the Petitioner as to suit property, in the event of any further disturbance and encroachment in the suit property, it is the Petitioner who would stand deprived of his use of the disputed property and not the Respondent, hence the balance of convenience also lies in favor of the Petitioner who is on a stronger footing than the Respondent to get the relief of interim injunction. Since there is a disturbance and threat of encroachment on the suit property, the interference of this court is necessary to protect them from irreparable injury till the legal right claimed by them in the Suit is established.



12. In light of the observations made in the preceding paragraphs, Petitioner has succeeded in bringing his case within the parameters of the three pillars requisite for grant of an injunction under **Order 39 Rules 1 and 2 of the CPC** namely by establishing the Prima facie case, the balance of convenience and irreparable loss. Thus in the backdrop of above discussion and circumstances of this case, the preservation of the suit property is very much required and the nature of the same should not be changed until disposal of the suit, hence considering the nature of submissions coupled with the nature of the dispute as to boundaries pending between the parties, this Court is constrained to opine that the passing of an order of status-quo over the suit property shall meet the justice. Therefore, to meet the ends of justice and to avoid any further litigation, this court is inclined to grant an interim injunction and both parties are here by directed to maintain the status quo with respect to suit property 'until the disposal of the main suit'. No cost

Dictated to the typist, transcribed by her, corrected, and pronounced by me in open Court, this the 19th day of January 2023.

District Munsif,
Thiruvadanai.

Petitioner's Side Witness:-

-- Nil--



Petitioner's Side and Documents :-

Ex.P1	House tax receipts in the name of Rawthar Naina - Original
Ex.P2	Notice of demand for house tax - Original
Ex.P3	Tax fixation form by Assistant settlement officer - Original
Ex.P4	Settlement general enquiry report - Original
Ex.P5	Tax receipts in the name of Kaasara bheevi - Original
Ex.P6	Electricity bill receipts in the name of Kaasara bheevi - Original
Ex.P7	Patta vide No.196 in the name of Kaasara bheevi - Original
Ex.P8	Sale deed dated 13.11.2022 executed in favour of Petitioner - Original
Ex.P9	Tax receipts in the name of Petitioner - Original
Ex.P10	Complaint given before police station Thondi - Xerox
Ex.P11	Petition given before Revenue divisional officer - Xerox
Ex.P12	Nilavudamai Kuripedu - Original



Ex.P13	Property tax receipts in the name of Seenimohamed - Original
Ex.P14	Property tax receipts in the name of Kaasarabheevi - Original
Ex.P15	Certified copy of Patta vide No.196 in the name of Kaasarabheevi
Ex.P16	Certified copy of A Register

Respondents' side Witnesses:-

--Nil--

Respondents' side and Documents : -

Ex.R1	Photographs of the suit property - Original
Ex.R2	Sale deed executed in the year 1977 by Noorjahan bheevi-Original
Ex.R3	Patta vide No.474 in the name of Noorjahan bheevi - Original
Ex.R4	Water tax book in the name of Noorjahan bheevi - Original