

IN THE COURT OF THE III ADDITIONAL DISTRICT COURT, SALEM.

Present: Tmt. L.Kalaivani, BA.,B.L.,
III Additional District Judge, Salem.

Wednesday, the 04th day of December, 2024.

I.A.No.03/2024

in

O.S.No.403/2024

Selvakumar

...

Petitioner/Plaintiff

/Vs/

1. The Forest Range Officer,
Serviroys, South Range, Salem-7.

2. The District Forest Officer, Salem-7.

3.The Tahsildar, Omalur Taluk, Salem.

4. The District Collector, Salem -1. ... Respondents/Defendants

This petition is coming on 02.12.2024 before me for final hearing in the presence of Thiru.S.S.Vijayaraghavan learned counsel for the petitioner and learned Government pleader for the 1st to 4th respondents, upon hearing the arguments of the both and having stood over for consideration till date, this court delivered the following:-

ORDER

This petition has been filed by the petitioner under Order 39 Rule 1 & 2 of CPC against the respondents for granting of interim injunction till the disposal of the suit.

1. The averments of the petition is as follows:-

The mother of the petitioner namely Sivakamiammal had purchased the 2 acres land in S.No.2/2 of Thathaiyangarpur village under a sale deed dated

02.06.1965 and to the north of above said property purchased, 2.5 acres poramboke lands was situated which is the suit property. The petitioner and his family members have been in uninterrupted continuous possession over the said 2.5 acres poramboke lands for the more than 50 years and the petitioner has spent money for the development of the land and he has cultivated various crops in the said land. The petitioner has constructed a Suyambu Muniappan temple and installed a borewell for irrigation in the suit property. While so, the 1st respondent attempted to dispossess the family of the petitioner on 14.10.1987 by placing boundary marks within the suit property. Therefore, the mother of the petitioner has filed a suit for permanent injunction as against the 1st respondent in OS.No.753/1987 and the said suit was renumbered as OS.No.20/1996 and the said suit was decreed on 31.01.2006.

Against which an appeal in AS.No.22/2006 was preferred before the learned Subordinate Judge, Mettur and the appeal was allowed on 08.06.2007. Being aggrieved over the same the petitioner has preferred the second appeal SA.No.1295/2007 before the Hon'ble High court and the second appeal was allowed on 02.06.2016. The petitioner is in continuous possession and enjoyment over the suit property for more than 50 years. While such being so, the respondents are trying to dispossess the petitioner from the suit property. Hence, the suit has been filed by the petitioner for the relief of declaration of title based on adverse possession. The present petition has been filed for granting interim injunction to restrain the respondents from interfering with the possession of the petitioner over the suit property.

2. Nutshell of the counter filed by the 1st Respondent and adopted by the 2nd to 4th respondents is as follows:-

The respondents had denied the averments stated in the petition except

that those are specifically admitted by them. It is false to state that an extent of 2.5 acres lands at the northern side of the S.No.2/2 is the poromboke land. In fact the said land is the reserved forest and the same is belonged to the state government of Tamil Nadu. The mother of the petitioner encroached a portion of the reserved forest notified as Pannikaradu Reserved Forest that situated by abutting the patta land in S.No.2/2 of Thathangarapet village. After knowing the encroachments made by the petitioner's mother Sivagamiammal and certain other persons in the said Pannikaradu Reserve Forest area, the Forest Range officer, Survey & Demarcation Range concerned and his subordinates have conducted an survey and measured the said encroached portion of lands in the said Pannikaradu Reserve Forest and prepared a list that indicating the names of the encroachers and also had drawn plans/maps that showing the portion of lands encroached by the respective encroachers including the mother of the petitioner in the said Reserve Forest and submitted his report to the higher officials vide his office proceedings in Na.Ka.No.1411/87 dated 07.07.1987.

After receiving the said Report, the Forest Range Officer, Shervaroys, South Range, Salem 636 007 i.e., 1st respondent herein had issued an Eviction Notice under section 68A of Tamil Nadu Forest Act, 1882 to the said encroachers including the mother of the petitioner and directed them to vacate the encroached portion of Pannikaradu Reserve Forest Land and to remove their belongings from the place within a specified time frame and has obtained due acknowledgment from them on 31.07.1987 for the receipt of the said Eviction Notice.

But, the above said encroachers including the mother of the petitioner had jointly filed a suit for the relief of permanent injunction in OS.No.753/1987 on the file of the Learned District Munsif Court, Mettur to restraining the Forest and Government officials from in any manner

interfering with their alleged possession and enjoyment of the respective portion of encroached portion of lands on the ground that the same was a Poromboke land as well as a Buffer Zone land that lying in between their Patta lands and the said Pannikaradu Reserve Forest Land.

During the pendency of the suit, as the said Sivagamiammal had died, her husband Palaniappan and her 2 sons namely P.Selvakumar (the petitioner herein) and P.Ravi had been brought on record as her Legal Representatives and impleaded as plaintiffs Nos.6 to 8 in the suit and thereafter, due to the constitution of the new District Munsif Court at Omalur, the suit in OS.No.753/1987 that pending on the file of the Learned District Munsif Court, Mettur had been transferred to the Learned District Munsif Court at Omalur and the same had been assigned with a new suit number as OS.No.20/1996 and proceeded further and after a full- trial, the above said suit was decreed as prayed by the Learned District Munsif Court, Omalur on 31.01.2006.

Aggrieved by the said Judgment and Decree dated 31.01.2006 passed by the said suit in OS.No.20/1996, the District Collector, Salem District on behalf of the State of Tamil Nadu and the 1st respondent herein had filed the First Appeal in AS.No.22/2006 and the same was allowed by the Hon'ble Subordinate Judge Court, Mettur on 08.06.2007 by setting aside the said Judgment and Decree dated 31.01.2006 that passed by the Trial court in the said suit in OS.No.20/1996 and dismissed the said suit.

Aggrieved by the said Judgment and Decree dated 08.06.2007 that passed by the Hon'ble Subordinate Judge court, Mettur in the said 1st Appeal in AS.No.22/2006, the above said Palaniappan and his 2 sons namely P.Selvakumar (the petitioner herein) and P.Ravi had preferred a second appeal in SA.No.1295/2007 before the Hon'ble High court of Judicature at Madras.

In the meanwhile, the Forest Range Officer, Shervaroys, South Range, Salem 636 007 i.e., 1st respondent herein had issued a Eviction Notice under section 68 A of Tamil Nadu Forest Act, 1882 to the petitioner and also to the said respective encroachers and directed them to vacate the encroached portion of Pannikaradu Reserve Forest Land and to remove their belongings from the place within a specified time frame and the said Eviction Notice was served on them on 31.07.2008 and as they have not come-forward to vacate the encroached portion of Pannikaradu Reserve Forest Land. On 10.08.2007, the eviction operation had been carried out under the Head of the Assistant Conservator of Forest, Salem Division and in the presence of the Police and Revenue officials concerned and the encroachments made by the encroachers including the petitioner/plaintiff herein and the said land was brought under the control of the Forest Department and planting works also carried out in the evicted field.

So, the encroachers had filed a writ petition in WP.No.16258 of 2008 before the Hon'ble High court of Judicature at Madras as if the Forest Range Officer, Shervaroys, South Range, Slem 636 007 i.e., 1st defendant herein has passed the eviction orders without considering their representations submitted by them on receipt of the eviction notice issued by him. Indeed, the Forest Range Officer, Shervaroys, South Range, Salem 636 007 i.e., 1st defendant had passed the said eviction orders on 07.08.2007 only after considering the representations made by the said encroachers and also found that there was not merit in it.

In the 2nd appeal the Hon'ble High court has held that if the land is within boundaries of reserved forest, the respondents are entitled to dispossess the petitioner by following the procedure under section 68A of Tamil Nadu Forest Act, 1882. The respondents have filed special leave petition before the Hon'ble High Court against the decree passed in 2nd appeal in a

SA.No.1295/2007 and in the special leave application also the Hon'ble Apex court observed that "Our understanding of the view taken by the High court is that of restoring the decree passed by the Trial court to the effect that the respondent(s)/plaintiff(s) shall not be disposed without due process of law by the competent authority; In that sense, it is open to the competent authority to proceed in the matter in accordance with law."

The petitioner has also approached the Hon'ble High court through the writ petition in WP.No.462/2020 wherein the Hon'ble High court has directed the forest department to remove the encroachment by the encroachers including the petitioner. But, the petitioner suppressed the above said order passed by the Hon'ble High court and filed the present petition. The petitioner is not in actual and physical possession over the suit property and there is no poromboke land or Buffer zone lies in between the patta land and Pannikaradu Reserved forest. There are no merits in this petition. Hence, it is prayed of dismissal.

3. Point for consideration is:-

Upon considering the petition, counter and other materials, this court has framed the following point for consideration:

" Whether the petitioner is entitled to get temporary injunction till the disposal of suit as prayed for?

4. Evidence let in :-

Both the petitioner and respondents have not produced any oral evidence and also they have not marked the documents produced by them as the exhibits.

5. Answer to the Point:-

This petition has been filed by the petitioner who is the plaintiff in the

suit under order 39 rule 1 & 2 of CPC seeking interim injunction to restrain the respondents from interfering the peaceful possession and enjoyment of the petitioner over the petition mentioned property. It is the case of the petitioner the mother of the petitioner has purchased 2 acres land in S.No.2/2 of Thathaiyangarpet village under the sale deed dated 02.06.1965 and to the north of the said land 2.5 acres poramboke lands is situated. The petitioner and his family members have been in continuous possession and enjoyment over the above said poramboke land for more than 50 years. While such being so, the 1st respondent attempted to dispossess the family of the petitioner from the above said poramboke lands. Therefore, the mother of the petitioner has filed suit in OS.No.20/1996 on the filed of District Munsif, Omalur and the said suit was decreed. As against the same an appeal in OS.No.22/2016 was preferred and the appeal was allowed. Being aggrieved over the same, the petitioner has prepared a second appeal in S.A.No.1295/2017 and the same was allowed on 02.06.2016. Even after the disposal of the 2nd appeal, the respondents are trying to dispossess the petitioner from the suit property. Hence, the petitioner has filed suit for declaration of title based on the basis of adverse possession and the present petition is for interim injunction till the disposal of the suit.

6. Per contra, the respondents would contend that the suit property 2.5 acres lands at the north of the S.No.2/2 is not the poramboke lands. In reality, the said property is the reserved forest and the same has been notified on 25.10.1887 and published in the Gazette dated 25.10.1887. Therefore, the respondents are trying to evict the encroachers from the year 1987 under the due to process of law. But, the petitioner and his family members are restraining the legal action of the respondents by way of the several litigations. Hence, it is pray for dismissal.

7. Having regard to the rival submissions, the present application is filed

under Order 39 Rule 1 CPC. It is well established principle of law that the party seeking interim injunction must prove that he has a *prima facie* case, balance of convenience in his favour and if not injunction granted, irreparable loss would cause to him. Needless to say, the word '*prima facie case*' is not defined in the Code of Civil Procedure. However, the judicial pronouncements would indicate that *prima faice* case need not be a case to be proved to the hilt, all that the Court has to see is that on the face of it the person applying for an injunction has a case which needs consideration and which is not bound to fail by virtue of some apparent defects. The above position has been well explained in the case of **George vs State AIR 1972 Ker 181**. With this prelude, this court has to approach the case of the petitioner to satisfy the triple test of *prima facie* case, balance of convenience and irreparable loss.

8. It is noted that the petitioner claims the title over the 2.5 acres land at the north of S.No.2/2 based on adverse possession. It is the contention of the petitioner that the above said 2.5 acres land is in possession over their family for more than 50 years and it is the poromboke land and not the reserved forest. To substantiate the contention of the petitioner he has filed as many as 15 documents along with the plaint. But, except the documents number 12 Photographs and document number 14 lands tax receipt all other documents are xerox copies. It goes without saying that xerox copies of documents are secondary evidence and unless factual foundations are made for non-production of originals, it cannot be taken into consideration.

9. Further, to receive the xerox copies as secondary evidence, as held in the case of **Seethaiammal (D) and others Vs. Ramakrishna Asari (d) and others 2017-4-LW. 414** at para 20, provision of section 65 of the Evidence Act should have been complied and without establishing the loss of original or its destruction, the xerox copy cannot be received as a secondary evidence . More particularly the petitioner has not marked any of the document as

Exhibit in this petition. Since it is produced along with plaint and forms part of the record, a careful perusal of document No.14 land tax receipt it could be seen that there is no reference in the said documents in respect to the dispute property. The document number 12 photographs of the alleged suit property which cannot establish any right or interest over the suit property.

10. Be that it may, the respondents have not disputed the earlier litigation between the petitioner and them in OS.No.753/1987, AS.No.22/2006 and SA.No.1295/2007. Admittedly, the mother of the petitioner has filed a suit for permanent injunction to restrain the respondents from interfering her possession over the present suit property and the said suit in OS.No.753/1987 was decreed. Against which an appeal in AS.No.22/2006 also filed before the learned Subordinate Judge, Mettur and the same was allowed. Subsequently, the petitioner has filed 2nd appeal in SA.No.1295/2007 and the same was allowed. Against the 2nd appeal the respondents herein have moved a SLP.No.23221/2019 wherein the Hon'ble Apex court observed as follows:

" our understanding of the view taken by the High court is that of restoring the decree passed by the Trial court to the effect that the respondent(s)/plaintiff(s) shall not be disposed without due process of law by the competent authority; In that sense, it is open to the competent authority to proceed in the matter in accordance with law."

11. After the disposal of the above said litigation the present suit and the interim application have been filed in the month of may 2024. During the pendency of the suit the petitioner sought interim order of injunction contending that the respondents issued notice under section 68A of Tamil Nadu Forest Act, 1882 and trying to disposes him from the suit property if they dispossessed he will be put into irreparable loss and hardship. On the other hand the learned Government pleader submitted that after the disposal

of Special Leave Petition, the petitioner herein has approached the Hon'ble High court by way of writ petition in WP.No.462/2020 wherein the Hon'ble High court held that the petitioner herein is the encroacher and the forest department are directed to remove the encroacher by following the procedure. Therefore, notice under section 68A of Tamil Nadu Forest Act, 1882 was issued to the petitioner for removing the encroachment. Thus, the respondents are trying to evict the petitioner only under the due to process of law.

12. Upon considering the rival submissions, it is noted that the petitioner herein has not stated anything about the order passed by the Hon'ble High Court in writ petition WP.No.462/2020 dated 26.02.2024 in which the petitioner herein is the writ petitioner. In the said order dated 26.02.2024, the Hon'ble High court directed the respondents to remove the encroachment by following the procedure contemplated under the Forest Act. It is pertinent to note that our Hon'ble High court categorically held in the WP.No.462/2020 that the petitioner is the encroacher of the forest land after considering the report filed by the concerned authority. It does not recognize his possession to that of adverse possession or settled possession. Therefore, it is crystal clear from the earlier order passed by the courts that, having failed in the all litigations, in order to wriggle out the situation and to circumvent the order passed by the Hon'ble High court in WP.No.462/2020 the petitioner has come-forward with the present petition.

13. Moreover, it is the submission of the petitioner that the forest settlement officer has not given notice to the occupier of the lands before the notifications dated 25.10.1887 and they have not followed the procedures before issuing the notification. Therefore, the action taken by the respondents is not proper. It is pertinent to note that the mother of the petitioner has purchased only the S.No.2/2 only on 02.06.1965. But, the unreserved strip of land situated within the limits of Pannikaradu was notified on 25.10.1887.

Therefore, there is no possibility for the forest settlement officer to issue notice to the petitioner and his mother before the notification. Moreover, once a land is notified as Forest Land, it cannot be questioned before the civil court. In the case of **The State of Tamilnadu and others Vs Balaji Pandithar chatram and others SA(MD)No. 979 of 2007 and CMP (MD)No.2675 and 3069 of 2021**, it has been held at para 16 that over the area declared as forest land in the Tamilnadu Gazetted Notification, the plaintiff cannot have any right and in fact the civil court cannot go into this question when the lands were declared as reserved forest under section 5 of the Act. Thus, the above said submission of the petitioner is not sustainable.

14. As stated above, in the interim application, the Triple principles need to be considered, i.e., Prima facie case, Balance of convenience and Irreparable injury. Speaking academically and in legal parlance, at the risk of repetition, this court would state that the meaning of term Prima facie case is nothing but a fair and a serious question to be tried in the suit and there is every possibility that the petitioner will ultimately succeed to the permanent relief. The Balance of convenience means the inconvenience which the petitioner would be put should be greater if no interim injunction is granted then the inconvenience to which the Respondents would be put if interim injunction is granted. The Irreparable injury means an injury that cannot be adequately compensated monetarily.

15. In the case at hands, it is very clear that the Petitioner has failed to show the prima facie case based upon his averments in the petition and the documents produced by him. As per the order of the High court, as the competent authority, the 1st and 2nd respondents are entitled to evict the petitioner from the suit property by following the due process of law. Accordingly, the 1st and 2nd respondents proceeded with. Further, The Balance of convenience is not tilting in favour of the Petitioner. It is also not

established by the petitioner that if not injunction granted, the Petitioner would suffer any irreparable loss. In the backdrop of the above discussion, this court, without any hesitation, would come to an ultimate conclusion that the petitioner is not entitled for the relief as prayed for and the petition deserves dismissal. Accordingly, the point is answered.

16. In the result, this petition is dismissed. No cost.

Dictated to the steno-typist directly, computerized by her corrected and pronounced by me in the open court on 04th day of December 2024.

sd/- L. Kalaivani,
III Additional District Judge,
Salem.

Petitioner Side Witness and Exhibits :-Nil

Respondents side Witness and Exhibits:- Nil

sd/- L. Kalaivani,
III Additional District Judge,
Salem.