

**IN THE COURT OF THE DISTRICT MUNSIF, DEVAKOTTAI**

**PRESENT: Thiru. A. DHARANIDHARAN, B.Sc., M.L., M.A., LL.M.**

District Munsif, Devakottai

Wednesday, the 10<sup>th</sup> day of November, 2021

**I.A. 01/2020**

in

**O.S. No. 22/2020**

Senthilnathan and others

Petitioners/Plaintiffs

Vs

Kasi and others

Respondents/Defendants

This petition having been finally heard on 17.09.2021 in the presence of Mr. B. Siva, learned counsel for the petitioner/plaintiff and in the presence of \_\_\_\_\_, learned counsel for the respondents/defendants and Government Pleader for R5 and R6 and after perusal of the entire records and having stood over for my consideration till this day, this Court delivers the following:

**ORDER**

This is a petition filed under Order XXXIX Rule 1 & 2 r/w Sec 151 of Civil Procedure code seeking Ex-parte ad-interim injunction against the respondents R1 to R6 restraining them not to interfere in the peaceful possession and enjoyment of right over the petition-mentioned property till the disposal of the suit.

**2. The averments set out in the petition/affidavit filed by the petitioner is as follows:**

**2.1 The Petitioner states that a suit has been instituted seeking the relief of declaration and mandatory injunction which is pending before this Court.**

**2.2 The Petitioner states that he is the Plaintiff in the main suit and the property found in Survey No. 103/3 was an ancestral property and patta was given for the said property. The petitioner states that approximately 50 metres away from the Survey No. 103/3, the Survey No. 102/12 is present and it has an extent of 4-1/2 cents of Gramma Natham property which is said to be the petition-mentioned property.**

**2.3 The Petitioner states that his ancestors were in possession of the petition-mentioned property for over seven generations. The Petitioner states that there was a pathway of approximately 30 feet length and 7-1/2 feet breadth to connect the property at Survey No. 102/12. The petitioner further states that on the east of the Survey No. 102/12 at about 1 cent, the petitioner had constructed a thatched roof which acts as a shelter for livestock and to store woods. The petitioner further states that he completely depend on the Survey No. 102/12 and constructed the thatched roof in Survey No. 103/3. The petitioner further states that he had applied for patta in his name with respect to the Survey No. 102/12 on 05/07/2016 to the Collector and other revenue authorities, but it was not given. The petitioner further states that the defendants were not in possession of the property at any point in time and prayed for ad-interim injunction against the respondents.**

**3. The averments set out in the counter filed by Respondent is as follows:**

3.1 The Respondents/Defendants denies the contention of the Petitioner/Plaintiff and states that they do not have any objection with respect to Survey No. 103/3 and it is irrelevant to this case. The respondents further states that as per the version of the Petitioner, the Survey No. 102/12 is a gramma natham property and the petitioner cannot claim right over it. The respondents further contend that the documents filed by the Petitioner were not fit in for the survey No. 102/12 which is said to be the suit property. The respondents further states that they are claiming any individual right over the Survey No. 102/12 and there is no cause of action with respect to it. The respondents further state that the petitioner has given wrong particulars to the Court. The respondent further state that fence was created to obstruct the wrongful entry of the petitioner and a case was registered in Crime No. 2800/18 against the petitioner at Velayudhapattinam Police Station. When the case is pending before this Court, the petitioner had made an application before the Tahsildhar who had later issued the free patta on 13/06/2018. The respondents further state that they have restrained the petitioner to pass via their property in Survey No. 102/11 and the present petition is not maintainable and should be dismissed with costs.

**3. Now the point for consideration is, whether this petition seeking ad-interim injunction is to be allowed or not?**

4. Documentary evidences were let in on the side of the Petitioner/Plaintiff.
5. No oral or documentary evidences were adduced on the side of the Respondents/Defendants.

6. Both side arguments heard. Both side learned counsels have contended by reiterating the averments made in the petition, affidavit and counter.

7. On perusal of the records, it comes to know that, the suit has been filed for the relief of declaration and for mandatory injunction over the suit property. The present petition is for seeking ad-interim injunction against the respondents restraining them to interfere in the peaceful possession and enjoyment of right over the petition-mentioned property till the disposal of the suit.

8. The three necessary ingredients in a petition for ad interim injunction are as follows: (i) Prima facie case (ii) Balance of convenience and (iii) Irreparable loss to the petitioner not compensated in terms of money.

9. This court would refer the case of ***M. Gurudas and others Vs Rasaranjan and others AIR 2006 SC 3275***. Where the Hon'ble Supreme Court of India had opined "...while considering an application for injunction, the Court would pass an order thereupon having regard to prima facie, balance of convenience and irreparable injury..."

10. Prima facie literally means, on the face of it. In ***Martin Burn Ltd. Vs R.N.Banerjee in 1958 AIR 79***, while discussing the meaning of the "Prima facie case" the Court said "

11. A Prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether the evidence let in was possible to arrive at

the conclusion in question and whether that was the only conclusion which could be arrived at on that evidence.

12. Further, Balance of convenience means that the comparative mischief or inconvenience which is likely to ensue from withholding the injunction, will be greater than that which is likely to arise from granting it. By applying this principle, the Court has to weigh the amount of substantial mischief that is likely to be done to the applicant if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted.

13. From perusal of all the Exhibits filed by the petitioner in the main suit, this Court is of the considered opinion that petitioner had not made out the prima facie case. This is a petition which had been filed for the relief of ad interim injunction restraining the respondents/defendants, or any other person acting under him not to disturb by encroaching the peaceful possession in the petition-mentioned property. The present petition is pending for over 1 year and it was kept pending at the stage of enquiry and finally heard. From the cumulative effect of the above discussions and also the elaborate consideration of the Arguments extracted supra, I am of the considered view that the Petitioner could not make out a prima facie and balance of convenience and irreparable hardship at this stage which can be decided in the main suit. Accordingly, the point is answered in negative.

**Hence, this petition is dismissed. No order as to costs.**

This Order was directly typed by me in my official laptop, corrected by me and pronounced by me in the open Court on this the 10<sup>th</sup> day of November, 2021.

**Sd./- A. DHARANIDHARAN,  
District Munsif,  
Devakottai**

**Annexure:**

List of witnesses on the side of the Petitioner/Plaintiff  
NIL

List of documents on the side of the Petitioner/Plaintiff  
NIL

List of witnesses on the side of the Respondents/Defendants  
NIL

List of documents on the side of the Respondents/Defendants  
NIL

**Sd./- A. DHARANIDHARAN,  
District Munsif,  
Devakottai**

**/True copy/**