IN THE COURT OF THE DISTRICT MUNSIF, DEVAKOTTAI

PRESENT: Thiru. A. DHARANIDHARAN, B.Sc., M.L., M.A., LL.M.
District Munsif, Devakottai
Friday, the 26th day of March, 2021

I.A. 3/2019
in
O.S. No. 51/2019

Jayaseelan — Petitioner/Plaintiff

Vs

Thainees — Respondent/Defendant

These petitions having been finally heard on 01.03.2021 in the presence of Mr. N. Ramji, the learned counsel for the Petitioner/Plaintiff and Mr. B. Siva, the learned counsel for Respondent/Defendant upon hearing the arguments of both sides and after perusal of the entire records and having stood over for my consideration till this day, this court delivers the following:

ORDER

This petition was filed under Order XXXIX Rule 1 and 2 r/w Sec.151 of Civil Procedure code, seeking ad interim injunction restraining the respondent/defendant their men, agents, servants, or any person claiming under them from in any way interfering with the petitioner/plaintiff peaceful possession and enjoyment of the petition property till the disposal of the suit.

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

2.1 The petitioner states that the suit property bearing Survey No. 138/2 was originally belongs to one Mangalsamy Chettiyar and his sons Arumainathan, Rathinam, and Anthony. Subsequently, the suit property was purchased the defendant with the money given by the plaintiff and his wife and a sale deed was executed on 25/08/2004 Vide Doc. No. 756/2004 on the file of Sub-Registrar Office Kalaiyar Kovil. Later, an inam settlement deed was executed by the defendant in favor of the plaintiff on 30/04/2009 vide Doc. No. 1317/2009 on the file of Sub-Registrar Kalaiyar Kovil. Since then, the suit property was in enjoyment of the Plaintiff and Patta was transferred on 21/08/2009.

2.2 The petitioner states that due to the willful instance of some people the defendant had canceled the inam settlement deed executed by him in favor of the plaintiff on 17/06/2014 Vide Doc. No. 2224/2014. The plaintiff came to have the knowledge of it when he had obtained the encumbrance certificate. When it was questioned to the defendant, the defendant states that the cancellation was done wrongly and it will be rectified. Meanwhile, when the petitioner was not in station, ie. on 21/06/2019, the defendant had unlawfully entered and removed the trees from the suit property. When a police complaint was preferred by the petitioner, it was directed by the police to knock the doors of the Civil court. On 24/06/2019, a petition was also lodged to the District Collector, Sivagangai.

2.3 The petitioner states that since the execution of inam settlement deed in favor of the plaintiff, the petitioner was in possession of the suit property and the

cancellation of the inam settlement does not bind on the petitioner. The petitioner further states that prima facie and balance of convenience lies in favor of the petitioner and it will lead to irreparable loss if the injunction is not granted to the petitioner.

3. The averments set out in the written statement filed by the defendant which is treated as counter is as follows:

3.1 The defendant admits the fact that the Survey No. 138/2 was the ancestral property of the Mangalasamy Chettiyar and his legal heirs. The defendant denies that the suit property was purchased with the money of the plaintiff and his wife.

3.2 The defendant further states that all the other averments were just figment of imagination.

3.3 The defendant states that the suit property bearing Survey No. 138/1 has a total extent of 0.03.5 Ars of Nanjai land and it was purchased with the money of the defendant and denies that it was not purchased from the money of the plaintiff's wife. The defendant further states that the inam settlement executed in favor of the plaintiff on 30/04/2009 was done with a willful intention against his parents. As the defendant is illiterate, the plaintiff and his family members had taken the defendant to the Kaliyarkovil Sub-Registrar Office and executed the document.

3.4 The defendant states that on the south portion of the Survey No. 138/1 approximately 3 1/2 cent was in possession of the defendant with a tile-roofed house since 2004 and taxes were paid by him with respect to it. The defendant

states that taking advantage of the illiteracy of the defendant, and suppressing the presence of house in the suit property, the inam settlement was executed as if the suit property was a vacant land. The defendant further states that a thatched roof was constructed in the year 2010 on the northern portion of the suit property in a 2 1/2 cent. The metes and boundaries shown in the inam settlement is wrong.

3.5 The defendant states that in the property mentioned in the inam settlement, the defendant has his house and on the eastern portion, one of the sons of the defendant constructed a thatched roof house and was in possession. The defendant states that the plaintiff had suppressed the presence of house in the suit property.

3.6 The defendant states that the plaintiff has paid deficit court fee and sought for consequential relief.

3.7 The defendant states that the inam settlement executed is completely wrong and the plaintiff is not entitled for the reliefs as prayed for. The defendant also further states that the inam settlement document was canceled with the consent of the plaintiff and he has knowledge of it.

4. Now the point for consideration is whether the petitioner is entitled to get the relief as prayed for?

4.1 Heard both sides carefully. Perused the records. This is a petition that had been filed for the relief of ad interim injunction not to disturb the peaceful possession of the petitioner in the petition property.

4.2. 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.

5. 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..."***

6. 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 "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 let in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence let it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.

7. 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.

8. The present case from the materials placed on records would show that the petitioner is in possession of the petition-mentioned property. The respondent though had given a detailed written statement had not come forward to effectively conduct the enquiry in IA to show the balance of convenience is not in favor of petitioner. Hence, the court holds the petitioner and balance of convenience is also in favor of the petitioner. Further, there would not be any prejudice to the respondents if the petition is allowed.

9. The court feels that irreparable loss not compensatable by money, would be caused to the petitioner. Both the parties could fight out the suit filed by them.

Hence, this court is inclined to allow this petition.

In the result, this petition is allowed. No 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 26th day of March 2021.

Sd./- A. Dharanidharan,
District Munsif,
Devakottai.

Annexures:

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

1. Settlement deed executed by the Defendant in favor of the Plaintiff dated 30/04/2009.

2. Patta transferred in the name of the Plaintiff dated 13/08/2009

3. Sec 10 (1) with respect to the suit property

4. House tax receipt with respect to the suit property

5. Certified copy of the cancellation deed of settlement dated 21/07/2017

6. Copy of the petition filed before the District Collector dated 24/06/2019.

List of witnesses on the side of the Respondent/Defendant
NIL

Sd./- A. Dharanidharan,
District Munsif,
Devakottai.

/ True Copy /