

IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF, TIRUPPUR.

Present : Thiru.K.R.Kannan, B.A., B.L.,

Principal District Munsif, Tiruppur.

(J.O.CODE : TN01220)

Tuesday the 20th day of August 2024.

I.A.No.07/2022 in O.S.No.01/2022

V.K.M.Muhamed Haneeba.

... Petitioner/Plaintiff

/Versus/

A.J.Abibur Rahman.

... Respondent/Defendant

This petition came before me on 08.08.2024 for the final hearing in the presence of Thiru.S.Dharmaraj, B.Sc., B.L., Advocate for Petitioner/Plaintiff and Thiru.M.Mohamed Khan, M.B.A., B.L., Advocate for Respondent/ Defendant, and after hearing both parties and on perusal of available records, this court passed the following:

ORDER

The petitioner who is the Plaintiff in the suit filed this petition under Order XXXIX Rule 1 & 2 and U/s 151 of CPC and asked this court to grant a Temporary Injunction restraining the respondent/1st defendant and his men, not to make any further constructions over the superstructure's built in the suit property till the disposal of the suit.

2. The averments stated in the affidavit are as follows :

i) The petitioner submit that the plaintiff in the suit. The petitioner filed the suit for declaration for removal of encroachment portion and for other reliefs against the defendant.

ii) The petitioner/plaintiff beg to submit that an extent of 1287 Square feet land situated in Tiruppur Big Bazaar Street, in Tiruppur Village Survey field Number in T.S.F.No.50 and now Survey field No.9 in ward “D” and Block No.54 is belonged to plaintiff by virtue of Partition deed dated 24.04.2015. In the above said property, an extent of 50 Square feet on the Northern side near boundary of the 1st defendant site bearing number T.S. No.49 and new T.S.No.8 is the suit property.

iii) The petitioner/plaintiff beg to submit that the above said suit property and other connected properties originally belonged to the petitioner’s father. The petitioner’s father executed a settlement deed on 03.12.1960 infavour of his mother and her children including the petitioner being a minor under registered deed on 03.12.1960.

iv) The petitioner/plaintiff beg to submit that as per the settlement deed on 08.07.1987, the petitioner mother, brother and sisters entered into partition of the property and by which the 4th item of “A” Schedule properties was allotted to the petitioner and his brother. The said 4th item is the suit property.

v) The petitioner/plaintiff beg to submit that thereafter the petitioner and his brother partitioned the joint and common property by a registered partition deed on 24.04.2015 and the suit property is allotted to the petitioner. The petitioner is the absolute owner of the suit property as per the partition deed dated 24.04.2015. From the date of the said partition deed, the plaintiff has been in possession and enjoyment of the suit property.

vi) The petitioner/plaintiff beg to submit that the entire suit property has been constructed with tiled roof made up of lime and brick stones and aged more than 70 years. The petitioner’s father and his family member have been continuously in possession and enjoyment for more than 70 years with entire extent.

vii) The petitioner/plaintiff beg to submit that the respondent/defendant is the neighbour site owner of the suit property, which is situated on the northern side. While so, on 09.09.2021, the respondent/ defendant started to dismantle the East-West wall of the suit property. Even though the petitioner resisted the illegal act of the respondent/ defendant, he was continuously doing the same without his absence. So,

the petitioner lodged a complaint to the Inspector of Police of Tirupur, South Police. But, the police, being it is civil nature, did not take action against the respondent/ defendant.

viii) The petitioner/plaintiff beg to submit that the respondent/ defendant is a very dominant person and having highly political influence and he can do anything within the local town. The petitioner made several attempt to stop the construction over the suit property by lodging a complaint and letters to the higher officials on various dates, but the petitioner is not able to stop of construction made by the respondent/ defendant. The respondent has also encroached the street and he is putting up construction, the defendants 2 to 5 did not take any action against him in spite of his instruction.

ix) The petitioner/plaintiff beg to submit that he has submitted here with the old survey field filed map along the above said title deeds dated 1960, 1987 and 2015 as his document to prove the petitioner's title to the suit property and to prove the long possession and enjoyment for more than 70 years. In the said survey field, in the entire T.S.No.50, there was construction of title house building over the entire suit property.

x) The petitioner/plaintiff beg to submit that on 02.12.2021, the 2nd defendant measured the suit property and also the respondent/ defendant property as per the town survey field map. At the time of measurement, the petitioner submitted all his title deeds and old Town survey field map. But he acted highly infavour of the respondent/ defendant and did not care petitioner words. The 2nd defendant was acted highly in favour of the respondent/ defendant. So, the respondent/defendant encroachment of the suit property on the northern side into 50 square feet was done with help of the 2nd defendant.

xi) The petitioner/plaintiff beg to submit that taking advantage of the 2nd defendant help and instigation, the respondent/ defendant encroached 50 square feet in total as mentioned in the plaint schedule of the property and constructed buildings over the encroached portions. The respondent/ defendant has not only encroached the suit property, he but also encroached the public street and he has

constructed with large extent than the respondent actually is entitled to as per his title deeds.

xii) The petitioner has filed here with real photos for encroachment and dismantled the suit property's wall. The acts of the defendants are highly illegal and unlawful. Therefore the petitioner has asked to grant an order of ad-interim injunction as prayed for in the petition with cost.

3. The respondent/ defendant filed a memo to adopt the written statement as counter. The averments stated in the written statement filed by the respondent/ defendant is as follows:

i) The respondent submits that, the suit property is 1st defendant ancestral property and he is in peaceful enjoyment and possession since 1946. The said property very bordering to the plaintiff property.

ii) The defendant further submits that, very recently, the Co-sharer has executed a valid sale deed in favour of the defendant after receiving the sale consideration. After some time of registration the plaintiff turned up to defendant and asked to sell the property to the plaintiff, which is denied by the defendant then and there.

iii) The defendant further submits that, after registration, knowing the fact, the plaintiff arranged a survey through Tiruppur Municipality Surveyor Team. The surveyor team visited the site, took survey and marked the boundaries.

iv) The defendant submits that, being the defendant building is old one, the defendant demolished entire structure, and planned to go for a new construction. After demolish, the respondent applied with Tiruppur Municipal Corporation for survey of his site on 15th September, 2021, and he has paid the required fee for the same. Subsequent to this the survey team visited the site, Took Measurement and marked the boundaries in connection to the survey, the surveyor they issued a report.

v) The respondent further submit at the time of survey team visit and marking boundaries the plaintiff was literally there. After a long time of survey, raising objection show his bad intention that, nobody should raise any structure in the neighborhood of, mucky problems, he can create that nobody will prefer either to

construct or to buy the property. So, that it becomes easy to negotiate and buy the defendant property at rock bottom price.

vi) The defendant humbly submits that, only after a proper survey, the defendant commenced construction. Also, the defendant has not encroached a part or whole of the plaintiff property and till now he spent Rs.19 lakhs on the building.

ix) The defendant also states that even after two times of survey and marking boundaries in the suit property. Further waiting for a long time to lift up the building and also keeping silence for a long time, raising objections at the time of middle of construction shows the bad intention of the plaintiff and asked this court to dismiss the petition with cost.

4. Both side have not lead any evidence. On the side of petitioner Ex.P1 to Ex.P10 were marked. On the side of respondent Ex.R1 to Ex.R5 marked. The commissioner report and plan were marked as Ex.C1 to C3.

5. Now the Point for Consideration is whether this petition has to be allowed or not?

6. Point for Consideration :

i) The petitioner herein is the plaintiff in the suit and the respondent is the 1st defendant in the suit. The parties are discussed in this order as pleaded in the plaint.

ii) The plaintiff filed the suit against the respondent and other defendants asked a relief of declaration of title relating to the encroachment made by the 1st defendant in the suit property and asked a relief to handover the possession of the encroached portions and further asked to declare the settlement and re-survey relating to T.S.No.9 as null and void. The plaintiff also asked a relief of mandatory injunction against defendant's 3 to 5 and asked a relief of Permanent injunction against the 1st defendant not to make any further constructions in the encroached portion in the suit property.

iii) On perusal of records, this court framed issues on 13.06.2023 and the suit is in the stage of trial. Already this court has closed this application since the suit is

ripped for trial. Then, as per the memo filed by the plaintiff this application was reopened after filing of the commissioner's report and plan.

iv) The learned petitioner counsel has submitted the 1st defendant after creating a partition deed and with the help of survey department changed the revenue records encroached 50 feet in the suit property and the entire extent of the public road. As, per the Commissioner Report and Plan Ex.C1 to Ex.C3 the commissioner has stated the 1st defendant has put up constructions in the common lane in S.F.No.48 and a part in T.S.No.50. He further submitted the 1st defendant is continuously raising the superstructures in the encroached portions after filing of the suit with an ulterior motive to grasp the same. So, the learned plaintiff counsel asked this court to allow the petition as prayed for with cost.

v) On the other hand the learned 1st defendant counsel strongly opposed the arguments submitted by the plaintiff counsel. The learned defendant counsel further argued, the 1st defendant has constructed his house as per the partition deed and the sale deed entered between his family members. The learned first defendant counsel further argued the plaintiff have no right in the entire suit property as per his Parent Documents. The learned counsel further argued the plaintiff has created all the records in order to file this false suit stating that the 1st defendant has encroached the suit property. So, he asked this court to dismiss the petition with cost.

vi) The arguments submitted by both parties, and the documents produced by the plaintiff and the 1st defendant were perused. The plaintiff filed the suit stating that the 1st defendant has made encroachment in the suit property and asked a relief of Mandatory injunction to remove the constructions made in the encroached portion and for recovery of the same. The suit is now in the stage of trial. The advocate/commissioner after visiting the suit property filed his report and plan and the same were marked as EX.C1 to C3. In the commissioner report EX.C1 the advocate/commissioner stated the 1st defendant had encroached a portion of land on the eastern side of north south corner of the suit property. In Ex.C1 the commissioner further stated after measuring the property as per the title deeds and as per the revenue records there was a encroachment of 49 Sq.ft in plaintiff property and the

1st defendant also made constructions in T.S. No.48 which is a lane as per the revenue records.

vii) On perusal of EX.R4 which is an adangal relating to T.S.No.50 which was issued is in the name of one Balkisbee. But, in the adangal there is no detail's of measurement given relating to the house of Balkisbee. On perusal of EX.R5 T.S.No.9 is mentioned as Arthanari Chettiar Lane.

viii) The plaintiff terraced the title to the suit property as per EX.P1. But, the 1st defendant has stated in Ex.P1 measurements were not available in the said sale deed. The learned counsel further argued Ex.P2 and P3 were created for purpose of filing of the suit. On perusal of EX.P5 T.S.No.10 is mentioned as Gurunathar gounder Lane and T.S.No.9 is mentioned as Arthanari chettiar Lane. On perusal of EX.P6 and Ex.P.7 T.S.No.10 is mentioned as Arthanari chettiar Lane.

ix) As per Ex.C1 to C3 the 1st defendant has made an encroachment in T.S.No.48 and 50. Whether the 1st defendant is having a right over the encroached portion or not cannot be decided by way of this application. The plaintiff has pleaded in the plaint that the 1st defendant has made an encroachment in T.S.No.9. As, per EX.C2 the dispute portion is shown in Red colour straight line and the encroached portion is shown in Violet Colour. As per EX.C3, T.S.No.9 is shown in green colour, T.S.No.1,3,7, 10 are mentioned as street. In EX.C3 the plaintiff tiled house is shown in green colour, T.S.No.8 part is shown in red colour line portion.

x) Hence, as per the discussions made above at this stage this court is not in a position to decide whether the encroached portions as per Ex.C1 to Ex.C3 is absolutely belongs to the plaintiff or 1st defendant or T.S.No.48 is a common lane as per the title deeds and revenue records of their respective parties. This, court can consider all those aspects only at the time of trial after considering the title deeds, revenue records and evidence. So, in this circumstances at this stage the 1st defendant have no right to make further constructions in T.S.No.48 and T.S.No.50 till the disposal of the suit. Hence, in the interest of justice the 1st defendant is here by directed not to make any further constructions in T.S.No.48 and 50.

7. In the result, this petition is partly allowed and the 1st respondent is hereby restrained by way of temporary injunction not to make any further constructions in the encroached portions in T.S.No.48 and in T.S.No.50 as stated in Ex.C1 to Ex.C3.

Dictated to the Steno-Typist, directly and typed by her in court computer and corrected and pronounced by me in the open court, on this the 20th day of August 2024.

Principal District Munsif,
Tiruppur.

LIST OF WITNESSES & DOCUMENTS

On the side of Petitioners Witnesses :- NIL

On the side of Petitioners Documents :-

Ex.P1	03.12.1960	Settlement deed executed by the plaintiffs father in favour of the plaintiffs mother and children bearing Reg.No.2796/1960 Xerox Copy.
Ex.P2	08.07.1987	Partition deed between Plaintiffs mother and her Children bearing registration number 2597/1987 Xerox Copy.
Ex.P3	24.04.2015	Partition deed between plaintiff and his brother bearing registration number 2175/2015 Certified Copy.
Ex.P4	-	Field map of suit property before re-survey settlement in T.S.No.50 of Tirupur Village Xerox Copy.
Ex.P5	-	Extract from the Town Survey Land Register T.S.No.9 of ward D and Block 54 of Tirupur Town Xerox Copy.
Ex.P6	-	Extract from the Town Survey Land Register T.S.No.9 of ward D and Block 54 of Tirupur Town Xerox Copy.
Ex.P7	-	Extract from the Town Survey Land Register T.S.No.8 of ward D and Block 54 of Tirupur Town.
Ex.P8	-	Extract from the Town Survey Land Register T.S.No.10 of ward D and Block 54 of Tirupur Town Xerox Copy.

Ex.P9	19.03.1986	Settlement Deed Reg.No.824/1986 Xerox Copy.
Ex.P10	24.06.2020	Settlement Deed Reg. No.2248/2020 Xerox Copy.

On the side of Respondent Witnesses :- NIL

On the side of Respondent Documents :-

Ex.R1	-	Parent Document of the plaintiff Xerox.
Ex.R2	25.03.2024	Copy of Memo given to Advocate Commissioner Original.
Ex.R3	25.07.2024	Copy of Memo given to Advocate Commissioner Original.
Ex.R4	-	The adangal issued by the VAO Original.
Ex.R5	-	Computer Patta submitted by the petitioner Xerox.

Court Exhibits :-

Ex.C1	-	Commissioner plan.
Ex.C2	-	Commissioner plan.
Ex.C3	-	Commissioner Report.

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