

IN THE COURT OF THE DISTRICT MUNSIF, THIRUVOTTRIYUR
THIRUVALLUR DISTRICT.

Present: Selvi. K. Malarkodi, B.A.,B.L.,
District Munsif,
Thiruvottriyur

Wednesday, this the 14th day of August 2024

I.A. No.2 of 2022

and

I.A. No.3 of 2022

in

O.S.No.199/2014

The Ashok Leyland Employees
Cooperative Industrial Housing Society
Limited (No.JJ289) By its President

...Petitioner/Plaintiff

//Vs//

1.Chennai Metropolitan Water Supply
and Sewerage Board

By its Managing Director

2. The Chief Engineer - Area1

Chennai Metropolitan Water Supply
and Sewerage Board.

3. The Executive Engineer -Area 1

Chennai Metropolitan Water Supply

4. The Executive Engineer - Area I

Chennai Metropolitan Sewerage

5. Chennai Metropolitan Development Authority,

By its Member Secretary

6. The Chennai Corporation

By its Commissioner

....Respondents/Defendants

These petitions came up on 09.08.2024 for final hearing before me in the presence of Thiru.Vivek and Shri.N.R.Gopaalan Advocates for Petitioner/Plaintiff and Thiru.S.Ponnivalavan Government Pleader Advocate for the 1 to 4 Respondents/Defendants and 5th respondent noticed dispensed since R5 remained exparte in the main suit and Tmt.Nirmala Jayarani Advocate for 6th respondent and upon hearing enquiry on both sides and having stood over for consideration till this date, this court made the following:

COMMON ORDER

These petitions are filed by the Petitioner/Plaintiff under section 151 of CPC to re-open the plaintiff's side evidence and Order 18 Rule 17 of CPC to recall the PW-1 to mark the certified copy of the order dated 11.08.2015 in M.P.1 of 2015 in W.P.13280/2015 of the High Court of Madras in the above suit.

2. Brief averments of the petition/affidavit filed by the petitioner/plaintiff in short are as follows:

The petitioner stated that he is the President of the plaintiff society in the suit which is the petitioner herein. The above suit was filed the relief of mandatory injunction and permanent injunction. The suit was filed in the year 2014. Though the 1st relief in this suit is that the water pipelines laid underground in the suit property inspite of the objection by the plaintiff, the defendants 1 to 4 tended to connect the said underground pipes with the main stream. Hence the plaintiff was

forced to file W.P.13280/2013 in the High Court of Madras seeking a Writ of Mandamus against the 1st defendant Managing Director as the 1st respondent, the 6th defendant the Corporation of Chennai as 2nd respondent and the defendants 2 to 4 herein as the respondents 3 to 5. M.P.No. 1/2015 was filed for an interim injunction to restrain the respondents in the Writ petition from connecting the two ends of the already laid underground water pipe of the main stream and not to do any further work in the property of the plaintiff. The Hon'ble High Court granted interim injunction on 11.08.2015 in M.P.No.01 of 2015. The certified copy of the order dated 11.08.2015 got mixed up with the other papers in the office of the counsel of the plaintiff at Chennai. Only recently the certified copy of the order was located in the office of the counsel of the plaintiff at Chennai and was given to him. The said order copy could not be filed along with the plaint as the Writ petition was filed only in the year 2015 after the filing of this suit. This suit is to be reopened for further evidence on the side of the plaintiff to enable to above said copy of the High Court order being filed. Hence this petition.

3. Brief averments of common counter filed by 1 to 4 Respondents/Defendants in short are as follows:

The respondents contended that he is the authorized person of respondents 1 to 4 in the above said suit and applications and he was well conversant with the facts and circumstances of the case herein. Admittedly the respondents laid UGSS

pipelines in the property in Thiruvottriyur town ward G block 18 Sub division 2 (618 part) which is a road as per Town Survey Field Register - Town Survey records. The claim of the Plaintiff/petitioner is that the suit property in Plot No.149 as a residential plot is a false one as the same is a road as per the records of the Thiruvottriyur Municipality. Also From the Town Survey Block Map approved by the Assistant Director of Survey, Chengalpet and also by Town Survey Inspector dated 26.07.2012 which clearly shows that the Land referred by the plaintiff is a road. The said road is adjacent to Glass Factory in East West direction. As per the plan residential plots with houses situated on both sides of the road. This road is only now disputed by the plaintiff/petitioner. The road which is disputed by the petitioner, where already water pipeline laid by the Thiruvottriyur municipality. Despite filing this suit. The petitioner/plaintiff has filed Writ petition in W.P.No.13280/2015 for the same relief which is also pending in the Hon'ble High Court, Madras. Since there is an interim injunction stands in favour of the petitioner does not mean that they have proved the case beyond all probabilities of ownership. The interim order has not been made absolute nor the same is extended till date. Even assuming without admitting that the interim order is in leave till date does not confer any title over the suit property. Plaintiff has let in evidence and elaborately cross examined during the year 2017 and 2018 itself and again on 2020 and 2021 itself. Admittedly, the dispute in land about the nature and classification of a land has to be decided based on the revenue

documents and not upon the Interim orders passed in Writ petitions. Both the parties have filed the revenue documents and the same has to be examined before deciding the case. The plaintiff/petitioner is making an abuse of process of law by filing this unwanted petition to drag the proceedings. Hence this petition is liable to be dismissed with cost.

4. Now the point for consideration is whether the petitions under section 151 of CPC and Under order 18 Rule 17 of CPC are to be allowed or not?

5. Heard on both sides.

6. The petition, counter and other materials available on records were carefully perused. R5 remained *ex parte* in the main suit. The counsel for the R6 made an endorsement as “no counter”. Both sides have not examined any witness and have not marked any exhibits and documents.

7. Admittedly, the suit is filed for mandatory injunction and consequential relief of Permanent injunction against the defendants. According to the petitioner/plaintiff he filed M.P.No.1/2015 in WP No. 13280/2015 before the Hon’ble High Court of Madras for an interim injunction to restrain the respondents from connecting the two ends of the already laid underground water pipe of the main stream and not to do any further work in the property of the plaintiff. The Hon'ble High Court granted interim injunction on 11.08.2015 in M.P.No.01 of 2015. The

certified copy of the order dated 11.08.2015 got mixed up with the other papers in the office of the counsel of the plaintiff at Chennai. Therefore he want to recall the PW1 and mark the order copy of the Hon'ble High court dated 11.08.2015.

8. Per contra, the respondents contended that no proper reasons was given by the petitioner. Since there is an interim injunction stands in favour of the petitioner does not mean that they have proved the case beyond all probabilities of ownership. Hence this petition is liable to be dismissed.

9. On perusal of records, it is seen that this case is pending for arguments at this juncture the petitioner/plaintiff has come forward with this present petitions to reopen and recall his evidence to mark the order copy of the Hon'ble High Court in M.P. No. 01 of 2015 in W.P No.13280/2015 dated 11.08.2015. The respondents/defendants strongly objected that these petitions are filed by the petitioner/plaintiff to prolong the proceedings.

10. However, this court feels that, the petitioner has to be given sufficient opportunity to put forth his case to meet the ends of the justice. No prejudice will be caused to the respondent by way of allowing these applications.

In the result, these petitions are allowed. No costs.

Dictated directly to the steno-typist, typed by her in the computer, corrected and pronounced by me in open court, this the 14th day of August 2024.

District Munsif,
Thiruvottriyur.

List of exhibits and witnesses on both sides: NIL

District Munsif,
Thiruvottriyur.