

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

PRESENT: Selvi. **R.M. Subathra**, B.A.B.L.(Hons.), M.L.(IPR).,
District Munsif, Ponneri.

Friday, the 19th day of July, 2019

I.A.567/2015
in
O.S.No.83/2015

1. P. Kalimuthu
2. K. Panneerselvam
3. Mohan
4. R. Rajendran

...Petitioners/Plaintiffs

-Vs-

1. Subbaiah
2. Lakshmi @ Ladachi

...Respondents/Defendants

This petition having been finally heard on 26.06.2019 in the presence of Mr. S. Elango, learned counsel for the petitioners/plaintiffs and Mr. G. Krishnamurthy, learned counsel for respondents/defendants and 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 is a petition filed under Order XXXIX Rule 1 and 2 of Civil Procedure code seeking ad interim injunction restraining the respondents/defendants, their men, agents, servants and others from in any way trespassing and putting up hut in the remaining portion of suit A schedule property till the disposal of the main suit.

2. The averments set out in the petitions affidavit filed by the petitioner are as follows:

- a) The petitioners/plaintiffs have filed the suit for recovery of possession of B

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schedule property and for permanent injunction, against the respondents/defendants. The suit property is a patta land purchased by 23 Burma Repatriates on 16.09.1969, for constructing a school and the patta stand in the name of said 23 persons. From the date of purchase the predecessors had been in peaceful possession and enjoyment by putting up a hut and they also conducted a free tuition centre for their children till 1980 and thereafter due to financial constraints, the school could not be run successfully and it was abandoned.

b) The respondents strangers in the property have no interest or title over the petition property had put up a hut adjacent to the suit B schedule property on the north western corner in Survey No.297, highway poramboke lands at Kummangalam Village and later were trying to encroach on the northern corner of the land of burma repatriates and the same was prevented by the petitioners.

c) The villagers constructed a Vinayagar Temple and the Ponneri Town Panchayat had erected a hand pump, used for drinking water and the same was abandoned in 2000 and the respondents encroached a portion and trespassed into a portion of B schedule property and put a hut.

d) The respondents have filed another suit in O.S.55/2005 against Kalaiselvan and collector Thiruvallur and the suit was decreed the suit on 09.10.2013 and permanent injunction was granted against Kalaiselvan, in respect of B schedule property.

e) During last week of December 2014, when the petitioner demanded respondents to vacate from B schedule property, they refused and on 20.02.2015, the respondents/defendants colluded and conspired together to put up a hut in the B schedule property. The respondent tried to interfere with A schedule property. Hence, the petition for grant of ad interim injunction restraining the respondents from trespass and putting up hut in the remain portion of A schedule property till disposal of the suit.

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

a) The suit schedule property is the property encroached by the defendants and the property was under the possession of the respondents/defendants, the property measuring 295/3A2 together with the Old No.D.34/43, New No.131 Panjetty salai, Thatched Hut Service Connection No.82.09.139, Vinayagar Koil and Alamaram Muneeswaran Koil bounded on North by: Barma Nagar 20 Feet, South by Church 27 Feet, West by Panjetty Road 50 feet and East by: Panneer house 45 feet and since one Kalaiselvan under the instigation of Panneerselvam and other Defendants attempted to disposes the above mentioned property the defendants filed a suit in O.S.No.55 of 2005 and the same has been decreed partially.

b) The suit scheduled property is not at all purchased by the Burma Repatriate, and even they are not at all in possession of the suit scheduled property, it is submitted that the property to the extent of 27 square meter was under the possession of the defendant and it is out of 3 1/2 cents. It is submitted that the S.No.297 is land adjacent to the defendants property. This was informed by the revenue officials to the defendants.

c) The predecessors never made any complaint against the defendants and there is no dispute between them. The 2nd defendants father Boopathy is a good friend of the 1st defendant and during his life time they all lived like brother but after the demise of the said Boopathy the 2nd plaintiff continuously disturbed the possession of the defendants and due to that the defendants filed a suit against the 2nd defendant and others.

d) The temple was constructed by the defendant defendants have not encroached the property and they are the owner of the property.

e) Paneerselvam is the adjacent resident and he frequently disturbed the possession of the defendant and therefore with that cause of auction the suit in O.S.No.378 of 2000 was filed before this court and later the said Paneerselvam requested to withdraw the suit and made a compromise so the suit was left as it is. The defendants never sought for permission to live in the portion B schedule property and never made any promise. Even the plaintiffs never approached the defendants to vacate the portion as if they have rights.

f) The defendants for the recovery of possession the plaintiff have to prove that the suit property belongs to them and further it is mandatory to prove that the possession was handed over by the plaintiff to the defendants and there should be lawfull relation in handing over the land and further the plaintiff ought to have sent a demand notice to the defendants to vacate the encroached portion. The plaintiff with the false cause of auction had filed this suit and attempting to evict the defendants. The defendants in the suit O.S.No.378 of 2000 no such cause of auction as alleged by the plaintiff.

g) The plaintiff have illegally mutated the revenue records and incorporated other 3rd parties in the patta, the same has been brought to the notice of present revenue officials, the same can be proved only after impleading the revenue officials. The defendant also after impleading the revenue officials. The defendant also after impleading the revenue officials, will make counter claim and he is reserving his right of counter claim. The defendant also reserve his right of filing additional written statements after impleading the revenue officials. Hence, the petition is to be dismissed.

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

5. On the side of the petitioner Ex.P1 to Ex.P5 were marked. On the side of respondents no oral and documentary evidence was let in.

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6. Heard both sides, perused the records. **Ex.P1** is the certified copy of the sale deed dated 16.09.1969. **Ex.P2** is the xerox copy of computerized patta dated 14.02.2012. **Ex.P3** is the commissioner report and plan. **Ex.P4** is the certified copy judgment in O.S.55/2005. **Ex.P5** is the certified copy of the decree in O.S.55/2005.

7. This petition filed under Order XXXIX Rule 1 and 2 of the code seeking for prayer for ad interim injunction restraining the respondents/defendants from trespassing into the remaining portion of 'A' schedule property. Ex.P1 to P5 are the documents filed in support of petition. Ex.P1 is the sale deed in respect of the 'A' schedule property. Ex.P2 is the patta in respect of the petition property. Ex.P3 is the report of the commissioner. The commissioner report states that attempt has been made to put up construction on the northern side of the 'B' schedule property. On perusal it is seen that 'B' schedule property forms part of larger extent, which is 'A' schedule property. The petition does not mention the boundaries of 'A' schedule property. The petitioner had stated that the respondent are trying to interfere in the remaining portion of the 'A' schedule property. The exact boundaries or the measurement has not stated.

8. In a prayer for interim injunction the three ingredients necessary are (i) Balance of convenience (ii) Prima facie case (iii) Irreparable loss to the petitioner.

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

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case" the court said "

A Prima facie case does not mean a case proved to the hit but a case which can be said to 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 on the evidence led 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.

11. Further, Balance of convenience means that comparative mischief or inconvenience which is likely to issue from withholding the injunction will be greater than that which is likely to arise from granting it. In 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 comparative it with that which is likely to be caused to the other side if the injunction is granted.

12. The court does not see any prima facie case made out in the petition. The petitioner had not stated how irreparable loss would be caused to the petitioner, if the petition is not allowed. It is further seen that the suit is also now ripe for trial and as the court cannot in the present petition make any roving enquiry and the parties can agitate the same in trial. Hence, this court is not inclined to allow this petition. Petition dismissed.

In the result, this petition is dismissed. No costs.

Order directly dictated to Steno-Typist, typed by him, corrected and pronounced by me in the Open Court on this, the 19th day of July, 2019.

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List of witnesses on the side of the petitioners

NIL

List of documents on the side of the Petitioners

Ex.P1	16.09.1969	Certified copy of the sale deed.
Ex.P2	14.02.2012	Xerox copy of computerized patta.
Ex.P3		Commissioner report and plan.
Ex.P4		Certified copy judgment in O.S.55/2005.
Ex.P5		Certified copy of the decree in O.S.55/2005.

List of witnesses on the side of the respondents

NIL

List of documents on the side of the respondents

NIL

**DM,
PNI.**

Fair/ Draft Order
I.A.No.567/2015
O.S.No.83/2015
Date:19.07.2019
DMC,PNI.

