

IN THE COURT OF THE DISTRICT MUNSIF, TIRUTTANI

**Present : Tmt. S. KAVIPRIYA, B.A., LLB.,
District Munsif, Tiruttani**

Dated this Tuesday the 20th Day of April 2021

IA.No.3 OF 2019 in IA.No.2 OF 2019 in OS.No.61 OF 2019

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1. K. Chandrasekaran
2. Vellasi Valli
3. Pedhappa (a) Padmavathy
4. Chinnapapa (a) Mageswari @ Rajeshwari

...Petitioners / Defendants

/Versus/

S.K. Giri

....Respondent /Plaintiff

This petition came up before me for final hearing on 30.03.2021 in the presence of Mrs. P.C. Sandhiya Rani, Counsel for petitioner and Mr. A. Venugopal, Counsel for Respondent. Upon hearing both sides and having stood over for consideration till this day, this court delivered the following:-

ORDER

This petition is filed under order 39 Rule 4 of CPC to vacate the ad-interim injunction order dated 18.09.2019 passed in the above suit in IA.No.2/2019.

Petition avernments in brief in as follows:-

2. The Respondent/plaintiff filed the above suit against the petitioners/defendants for permanent injunction restraining the petitioner from interfering with his possession and enjoyment of the schedule property and also an interim application in IA.No.2/2019 and the court was pleased to pass an order of interim injunction against. The petitioners were served with the private notice from the respondent's counsel about the order of injunction. The suit and the application by the Respondent / plaintiff for permanent and interim injunction respectively are not maintainable either in law or in facts. The Respondent /

plaintiff is not in actual possession and he in order to take possession and to achieve his illegal goal had now filed this injunction application. The Respondent / plaintiff who is not in possession of the property by misusing the process of court wanted to win over the possession from the petitioners/defendants. The Respondent / plaintiff filed a suit in OS. No.100/2003 before the Hon'ble Subordinate court at Tiruvallur, and the said suit was decreed in favour of Respondent / plaintiff. The respondent/plaintiff never informed the petitioner about the decree and he was only demanding the loan advanced by him. The Respondent / plaintiff was always demanding for his payment and never spoke about the property. The respondent/plaintiff approached for settlement and same was agreed. In the mean time the Respondent / plaintiff filed execution petition for getting the sale deed in his name and when the petitioner contacted the Respondent / plaintiff, he use to say that it is only formal and the petitioners will have a settlement. The petitioner uncle was looking after the case, he died and thus the petitioners could not follow and after words they contacted their advocate at Tiruttani and found that the Respondent / plaintiff obtained the sale deed executed in his name through court of law. The petitioner was approaching the Respondent / plaintiff for the settlement and the same was agreed by the respondent. While the settlement was going on the Respondent / plaintiff filed another Execution petition for delivery without the petitioners knowledge. When the petitioner came to know about the Execution petition for recovery of possession, the petitioners approached the Subordinate Judge, Tiruttani with necessary application to set aside the exparte order passed against the petitioner. The petitioner verified the court bundle and found that the Respondent / plaintiff was able to get deliver order from the Subordinate Judge at Tiruttani. No proper deliver was made infavour of the Respondent / plaintiff and the petitioners are still in possession of the schedule property. The delivery then recorded is only a paper delivery and there is no physical delivery of possession was made. In the mean time the Respondent / plaintiff hurriedly transferred patta in to his name and now trying to dispossess

the petitioners. Even till date the petitioners are in possession and enjoyment of the property. The petitioners preferred appeal against the decree and judgment in Subordinate Judge, Tiruvallur in OS. No.100/2003 and since there is delay in filing the appeal the application to condone the delay in filing the appeal was admitted in IA.No.3/2019 before the Hon'ble Principal District Judge, Tiruvallur and the Respondent / plaintiff also entered his appearance on 05.09.2019 and the case is posted on 27.09.2019 for his counter. The execution petition for delivery was not filed within a period of one year from the date of sale as per article 134 of Limitation act and thus the order of delivery of possession is incorrect. Further the petitioners grandmother Mrs. Sethamma died on 23.09.2011 and the Hon'ble Subordinate Judge on 30.11.2018 held that the notice served on her grandson is held sufficient and set aside. The Respondent / plaintiff in collusion with the revenue officials and others were able to get delivery receipt through court of law without actual physical possession. The entire process in the Execution petition in Ea.No.68/2018 for the delivery of the property is illegal and invalid. Thus the petitioner filed appeal before the Hon'ble Principal District Court at Tiruvallur against the order of delivery and it is yet to be dismissed. The Respondent / plaintiff is not having prima facie right to have an order of injunction and he is not in possession of the property. The remedy open for the respondent/plaintiff is otherwise. The Respondent / plaintiff by suppressing the actual facts without seeking the appropriate court for the actual relief had filed this application for injunction to achieve his goal by back door method. The balance of convenience is in his favour. Further great hardship is caused by the orders of injunction granted in IA.No.2/2019. The petitioner filing this application to set aside the order of injunction granted. If this application is not allowed the petitioners will be put to great loss and hardship. The Respondent / plaintiff is not bonafide.

Counter averments in brief are as follows:-

3. The petition is not maintainable either in law or on facts. Originally the suit properties were owned and possessed by one G. Kanniah Naidu. The said

Kanniah Naidu and his sons who is the 1st petitioner here in have entered into a sale agreement with this respondent dated on 27.12.2000, thereby agreeing to sell the suit property to this respondent for sale consideration of Rs.3,00,000/- and on the same date the received a sum of Rs.2,35,000/- towards the sale consideration from this respondents. Further, in the sale agreement it is stipulated that the respondent should pay the balance sale consideration of Rs.65,000/- and to get sale deed from them within a period of 3 years, i.e., on or before 26.12.2003. Accordingly this respondent had approached them with the balance sale consideration of Rs.65,000/- with a demand to receive the amount and to execute sale deed. But they have not chosen to comply with. Hence, this respondent filed a suit in OS. No.100/2003 on the file of Hon'ble Sub court, Tiruvallur against this petitioners for specific performance of after issue of legal notice, the said suit was decreed with on merits on 06.11.2007. In pursuance of said decree this respondent had deposited the balance sale consideration of Rs.65,000/- before the Hon'ble Sub court, Tiruvallur and then he was filed a Execution petition in EP.No.156/2008 to execute a registered sale deed and according to the said EP the sale deed was executed and registered by the Hon'ble Sub Judge, Tiruvallur. This respondent had filed execution petition for delivery of property in EA.No.68/2018 and this Hon'ble Court for an order for delivery and the delivery was effected on 26.04.2019 and the same was recorded on 06.07.2019. As such this respondent is an exclusive enjoyment and possession of the suit property by having patta in his name. While so, the petitioners 1 to 4 have obstructed this respondent from ploughing the suit land on 31.07.2019. Which was timely resisted by this respondent. So, this respondent filed this suit for bare injunction against this petitioners and the interim injunction and to granted ad-interim injunction order against the petitioners and the injunction order is in still force. Thus, this respondent alone is an absolute enjoyment and possession of the suit property. The respondent is having prima facie case and the balance of convenience is also rested with and the respondent is enjoying the fruits of the injunction order. The petition for the

interim injunction order in IA.No.2/2019 is pending for enquiry. So the petition filed by the petitioners to vacate of the injunction order is absolutely not necessary and this vacate petition is filed by the petitioners with an ulterior motive to drag on the proceedings and to coerce and to harras this respondent.

Point for determination:-

4. Whether the petitioners are entitled to the relief as sought for?

5. The petitioner filed this petition to vacate the injunction order granted in IA.No.2/2019. The Respondent/plaintiff filed a suit in OS.No.100/2003 in Sub Court, Tiruvallur and the same was decreed in favour of respondent. After that, the respondent filed Execution petition and in EA.No.68/2018 delivery of the property ordered and delivery also made on 06.07.2019. Since the petitioner resisting the respondent, hence, the respondent filed this suit for permanent injunction, after perusal of all records prima case made out, the injunction was granted to the respondent. But the petitioner herein now filed petition to vacate the injunction order by stating several allegations which has to be proved only by oral and documentary evidence by contesting the main suit. Hence, the injunction granted can not be vacated until the petitioner prove his case. Hence, in the interest of justice, this petition is hereby dismissed without costs.

7. In the result, this petition is dismissed without costs.

Dictated to Steno – Typist, computerized by her directly, corrected and pronounced by me in open court, this the 20th day of April 2021.

Sd/- S. Kavipriya
District Munsif,
Tiruttani.

Both sides Exhibits and witnesses: NIL

Sd/- S. Kavipriya
District Munsif,
Tiruttani.