

IN THE COURT OF THE DISTRICT MUNSIF, TIRUTTANI

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

Dated this Thursday the 7th Day of January 2021

IA.No.50 OF 2017 in OS.No.43 OF 2015

...

G. Jayaseeli

...Petitioner / Plaintiff

/Versus/

S. Amavasai

....Respondent / Defendant

This petition came up before me for final hearing on 18.12.2020 in the presence of M/s. M. MohanRaju and S. Naresh, Counsels for petitioner and M/s. V.S.Velayudham and L. Sudhapriyan, Counsels 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 section 151 of CPC to direct the respondent / defendant to demolish the building constructed by him in suit B schedule property in violation of interim injunction order of this court and restore it to its original position of vacant land for ends of justice.

Petition avernments in brief in as follows:-

2. The petitioner filed the above suit against the defendant for permanent injunction restraining the respondent from interfere with the petitioner's peaceful possession and enjoyment of the suit B schedule property and got interim injunction as against the respondent/ defendant in IA.No.224/2015. The suit summons, notices and also interim injunction order was properly served on the respondent / defendant and he has engaged his counsel and got time for filing counter and written statement in the said injunction petition and suit. After receiving the said order the respondent has filed another suit OS. No.73/2015 and got interim injunction for S.No.184/21 against the petitioner in

IA.No.371/2015. Whereas the petitioner filed suit and got interim injunction for S.No.184/22. Taking advantage of the said injunction order in OS. No.73/2015 for S.No.184/21, the respondent is constructing building in Suit B schedule property which is in S.No.184/22 by violating the interim injunction order granted against him in the above suit. In spite of police complaint the respondent is proceeding with his construction flouting the interim injunction order of this Court. Hence, he has clearly committed the contempt of court. He is not law aiding person and unless the respondent is punished he will not stop his acts of contempt. Hence, the petitioner filed this petition.

Counter averments in brief are as follows:-

3. The petition is not maintainable either in law or on facts. The petitioner filed this suit and got an injunction order was not extended some period. It is further states that the petitioner has suppressed the real facts that the suit B schedule property is in possession of her. But it is false and the same was proved that the suit B schedule of property to an extent of 5 feet on East to W Sest and 30 feet on North to South and foundation also raised by this respondent and same note down by an Advocate commissioner and he filed her report this court in IA.No.223/2015. The suit properties were inspected on 24.03.2015 on the very day of filing of this suit. The suit A and B schdeule properties boundaries also wrong and same was amended as per order passed in IA.No.633/2015 and IA.No.749/2015. So, the injunction got by the petitioner by suppressing the fact that this respondent was in possession of the same and he already laid foundation in part of that property prior to the date of filing of this suit and that foundation was whether laid in S.No.184/21 or 184/22 not proved by the petitioner. This court was pleased to deny extend an injunction order and there was no question of breach of injunction order arise. This respondent further states that he was laid foundation in his house site and he also got an inunction against the petition in OS. No.73/2015 on the file of this court. The

petitioner contest the injunction application and made absolute. The foundation laid in the said suit property also mentioned in the above case. The petitioner has not challenge the said injunction order passed in IA.No.73/2015 that the respondent has laid foundation in his site. But she never contest the said petition and admitting that the case of this respondent. So, as per injunction order of this court passed in OS. No.73/2015 is bonafide and this respondent never committed any violation of injunction order stated by the petitioner. So, the petitioner for contempt never maintainable is according to law. The framing suit itself is not maintainable according to law. Since, the part of suit B schedule property is in possession of this respondent and knowing fully the petitioner has suppressed the real fact and filed this suit for permanent injunction without seeking declaration and recovery of possession. So, the report of Advocate Commissioner has revealed that part of suit B schedule property was laid foundation prior to filing of this suit and no surveyor has identified that suit B schedule of property was situated in S.No.184/22, so there was no injunction order was breached by this respondent as alleged in the petition and this petition is vexatious and not maintainable and this respondent never committed any breach of injunction order of this court which is not extended further and the petition for demolishing the construction of building in suit B schedule or property which is constructed before filing of this suit and on that ground alone this petition is liable to be dismissed.

Point for determination:-

4. Whether the petitioner is entitled to the relief as sought for?

5. The suit is for permanent injunction restraining the respondent/defendant not to interfere with the petitioner's peaceful possession and enjoyment of the suit B schedule property. While filing the suit, emergent petition was filed injunction granted by this Hon'ble Court and Advocate Commission also appointed and the report also filed. The main dispute is in

extent of suit B schedule property in S.No.184/22. When the injunction petition is pending this petition was filed for violation of injunction by the respondent. But the Court passed order in main injunction itself to maintain the status-Quo. On perusal of the records and on enquiry, the respondent herein not violated the injunction and not further constructed in the suit B schedule property and the property is under same condition. The petitioner failed to prove the violated of injunction, there was no any evidence to show that the injunction was violated by the respondent. Hence, already there was an order of Status-quo till the disposal of the suit, this petition will not arise. Since, the violation of injunction is not proved, this petition becomes infructuous. Hence, this petition is liable to be dismissed without costs.

6. 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 7th day of January 2021.

Sd/- S. Kavipriya
District Munsif,
Tiruttani.

Both sides Exhibits and witnesses: NIL

Sd/- S. Kavipriya
District Munsif,
Tiruttani.