

**IN THE COURT OF THE I ADDITIONAL SUBORDINATE JUDGE,
VILLUPURAM.**

**PRESENT : Thiru. A. Tamilselvan, M.L.,
I Additional Subordinate Judge, Villupuram (FAC)**

Friday the 20th day of December 2024.

IA.No.2/2024

in

A.S.No.49/2024

(CNR.No.TNVP02-003537-2024)

Sivagnanam

..... Petitioner/Appellant
/Cross Defendant

//Vs//

Senthilkumar

..... Respondent/Respondent
/Cross 2nd Plaintiff

This petition is filed on 23.09.2024 and taken on file on 23.09.2024 and coming before me for final hearing on 18.12.2024, in the presence of Tr.T.S.Subramanian, counsel for the petitioner and Tr.D.Natarajan, counsel for the respondent and upon perusal of entire case records and upon hearing both side and having stood over for consideration till this day, this court delivered the following...

ORDER

This Petition filed Under Order 39 Rule 1 and 2 r/w. 151 of CPC praying to pass an order of ad-interim injunction restraining the respondent and his agent from interfering with petitioner peaceful possession and enjoyment of the suit property morefully described in the petition pending disposal of the appeal and the samed may be passed exparte as otherwise the very purpose of filing this I.A. will get frustrated.

2) Short and Summary of the affidavit and petition is as follows :-

The petitioner is the appellant in the above appeal and he have filed the suit in O.S.No.266/2015 for declaration and injunction with regard to the suit property namely S.No.268/3B - Ac.0.38 Cents (0.15.50) and the respondent herein is the 2nd defendant and the 1st defendant in the suit Ammakannu is his vendor who died during the pendency of the suit and she is represented by the respondent as the purchaser from her and the respondent had filed a cross suit in his suit for declaration of title and for injunction or in the alternative for recovery of possession and for the declaration that the rectification deed dated 08.09.2005 is null and void and the trial court after contest had dismissed his suit and decreed the cross suit granting the declaration of title, relief of injunction as well as declaration that the rectification deed dated 08.09.2005 is null and void as against which he have preferred the above two appeals one against the dismissal of his suit and the decree of the cross suit and the above appeal pertains to the cross suit and he have proved his title by the registered sale deed dated 10.05.2000 and the rectification deed dated 08.09.2005 executed by Ammakannu who was the 1st plaintiff who had died during the pendency of the suit and that the patta was also in my name and that the Patta Number is 31 and thus he have been in possession and enjoyment of the property eversince in the year 2000 as rectified rectification deed dated 08.09.2005 and on the otherhand the respondent (the 2nd plaintiff in the cross suit) had purchased the same property in the year 2015 from the same Ammakannu who had conveyed the property to him in the year 2000 and by the rectification deed 2005 and thus the 2nd plaintiff in the cross suit who is the respondent had no title to the suit property and he was not in possession of the property and his defence was that the rectification deed is by impersonation of Ammakannu and thereby pleaded forgery and the trial court wrongly shifted the burden on him when the respondent had filed the cross suit for declaration that the rectification deed is null and void as it was a forged documents by

impersonation and it should have framed the issue casting the burden on the respondent to prove that it was forged documents and in deed when he have preferred a police complaint it was proved that the thumb impression the rectification deed is that of Ammakannu and the said opinion was refused to be admitted in evidence without giving any and further more the respondent herein in the cross suit had prayed for declaration of his title and injunction and in the alternative for recovery of possession and he has not filed any patta either in the name of Ammakannu or in his name on the date of the suit as admittedly the patta was in my name but after the suit he had changed the patta in his name during 2017 and filed the kist receipt of the year 2021 & 2023 and thereby it is clear that he was not in possession of the property on the date of the suit and that he is alone in possession of the suit property and he is in possession and enjoyment of the property and now taking advantage of the decree the respondent is attempting to trespass of the property and if is allowed to do so he will suffer irreparable loss and admittedly there was no injunction in his favour and they are advised to state that they have a fair chance of success in the appeal and interest of justice requires that an injunction should be granted in his favour as otherwise he will suffer irreparable loss and he therefore pray that this Hon'ble Court may be pleased to pass an order of ad-interim injunction restraining the respondent and his agent from interfering with his peaceful possession and enjoyment of the suit property morefully described in the accompanying application pending disposal of the appeal and the samed may be passed exparte as otherwise the very purpose of filing this I.A. will get frustrated and all other just and necessary reliefs may be granted.

3) Short and Summary of the counter filed by respondent :-

The allegations in the affidavit are not true and the petition deserves dismissal with costs and the petitioner has no right to file the petition on hand in the appellate court for the first time for the reasons stated infra and as such the petition deserves

dismissal with compensatory costs and the petitioner had filed an application for grant of injunction till the disposal of the appeal which he is not entitled to and the petitioner has neither title nor possession of the suit property and the petitioner relies upon the alleged rectification deed dated 8.9.2005 and the fundamental principle for having the clear rectification deed is both the vendor and vendee should sign and in this case the alleged rectification deed is having the alleged signature of the deceased Ammakannu which had been specifically denied by her before her death even by a reply notice to the plaintiff's advocate which had been burked by him, but the same had been marked the respondent herein under Ex B11 and the petitioner should have followed the rule laid down under Rule 27(2) of the Registration Rules by the Inspector General's order of 1999 under which the vendor and vendee should join in any rectification deed and unilateral execution even if any one cannot be construed as a valid rectification deed at all and hence the same should be rejected and in this case it has been rightly rejected so and it is not out of place to point that the recital even in that deed is false and it has been stated as ifs only the survey number is wrong but in respect of topography of the property extent as well as the boundary for the same and as such an alleged rectification deed by payment of Rs.100/- alone had been obtained which cannot stand a moments scrutiny, since the suit property is far away with separate boundaries and as such it is a separate property and if at all the petitioner herein wanted to make a claim over the same a fresh sale deed had to be executed and not a rectification deed by paying stamp duty and registration charges afresh and when the stake of the alleged rectification deed is in doubt it is not understood how a suit for declaration and injunction lies without getting a decree that the alleged rectification deed is valid and then only a suit for declaration and injunction over the same lies and the petitioner should have known the suit for declaration of title etc., could succeed only on the strength of his own title and that could be done only by sufficient evidence and only the self serving testimony of the plaintiff alone cannot in any way advance the case of the plaintiff and the above aspects would go to show that

the plaintiff has no title and it has been clearly found in paragraph 19 of the trial court judgement that "வாதி தற்போது தாவா சொத்தின் பட்டா பிரதிவாதியின் பேரில் தான் உள்ளது என்று ஒத்துக் கொண்டுள்ளார் என்பதை குறித்து ஆவணங்களை பரிசீலித்த வகையில் பிரதிவாதிகளின் தரப்பில் வாதியின் அனுபவத்தை மறுத்து பி.சா.1 பட்டாவை குறியீடு செய்ததிலிருந்தும் நாளது தேதியில் 2ம் வாதியின் பேரில் பட்டா தாக்கல் உள்ளது என்றும் அதே போல் பி.சா 2 முதல் 5 வரையிலான புல வரை படங்களை பரிசீலித்த வகையில் இவ்வழிகில் 2ம் பிரதிவாதிக்கு வா.சா.4 ன் படி கிரயம் ஏற்பட்டு அதன் அடிப்படையில் பட்டா வழங்கப்பட்டுள்ளது என்று இந்நீதிமன்றம் முடிவு செய்கிறது. அந்த வகையில் தாவா சொத்தின் அனுபவித்தின் 2ம் பிரதிவாதி இருந்து வருவதாக தான் இந்த நீதிமன்றம் முடிவு செய்கிறது..... 2ம் பிரதிவாதி தான் தாவா சொத்தின் அனுபவத்தில் இருந்து வருகிறார் என்பதையும் அதற்கு ஆதரவாக 2ம் பிரதிவாதி பேரில் பி.சா.ஆவணம் 6, 7 ஆகியவற்றின் பேரில் வரி செலுத்தப்பட்டு வருகிறது என்று இந்த நீதிமன்றம் அறிகிறது. 2ம் பிரதிவாதி தாவா சொத்தின் அனுபவத்தில் இருந்து வருகிறார். என்று இந்த நீதிமன்றம் முடிவு செய்கிறது." and it has been held that when the original court after trial records a finding that the plaintiff is not in possession and the suit is dismissed on that ground it would not be fit case for ordering temporary injunction by the appellate court during the pendency of the appeal. "as per this dictum it is clear that when no interim order was passed or was initiated in the lower court and the suit for an injunction was also dismissed and as such for the first time in the appellate court no such petition can be entertained which would alter the judgement and the respondent is in possession and enjoyment of the suit property and in fact he had even raised now the casurina plant in the property and as such the allegation in the affidavit that the respondent herein is trying to trespass or threatening to trespass is wholly mischevious and in fact as held by the lower court and as well as on the basis of the topography the suit property is in possession and enjoyment and as such if at all the petitioner is Interested he should seek his remedy separate and not in this petition and the other allegations in the affidavit that are not admitted herein are specifically denied and the respondent therefore prays that the

petition may be dismissed with costs.

4. In this petitioner, there is no oral and documentary evidence let in by both sides. Both sides arguments heard. Available case records are perused.

5. Points for consideration:-

Whether this petition could be allowed or not?

6. Point :-

The appellant was the plaintiff in the Original suit No. 266 of 2015 and was the defendant in the Counterclaim on the file of the Court of Additional District Munsif, Villupuram (for short, the learned Judge) O.S. 266/2015 along with counterclaim was disposed of by the learned trial judge by way of common judgment on 16.8.2024. As against the judgment in O.S. 266 of 2015, the unsuccessful plaintiff therein filed the present appeal and interlocutory Application No. 2 of 2024 seeking an interim injunction against the respondents.

7. Along with the suit, the petitioner/appellant also preferred an application under Order XXXIX Rule 1 and 2 CPC. On the first day of the suit's hearing, the petitioner pressed for an ex-parte ad interim injunction against the respondent. After hearing the petitioner, the learned PDM issued a notice to the respondent. Thereafter, the interlocutory application was closed without passing any order since suit was ripe for trial.

8. The main contention of the learned counsel for the respondent is that the petitioner had not been granted interim injunction during the pendency of the suit and he is not entitled at appellate state. He relied on the decision of Hon'ble High Court

of Karnataka reported in AIR 1974 KARNATAKA 120, Ratnavathi Vs Munda Belchada, and others. Wherein it was held that

“if before the trial court, the plaintiff had the benefit of an order of temporary injunction until the disposal of the suit and before the appellate Court, he is able to show that irreparable damage would be caused to him if the order of injunction is not continued, the appellate Court may grant an order of temporary injunction if the equities of the case warrant the making of such an order”.

9. On the other hand, learned counsel for the petitioner would rely on the decision of the Hon’ble High Court of Rajasthan reported RLW 2007(3) RAJ 2676, Saraswati Devi (Smt) Vs Maharao Brajraj Singh (31.1.2007). Wherein it was held that

“15. A bare perusal of Order 39, Rules 1 and 2 clearly reveals that there is no statutory bar against the filing of a second temporary injunction application, provided new facts have emerged, which would warrant the issuance of the temporary injunction in favour of the plaintiff. Thus, the plaintiff is free to file a second application for temporary injunction provided new facts or events make out a case in his favour. Hence, the contention of the learned Counsel for respondent No.1 that a second application for temporary injunction is non-maintainable is unsustainable.”

10. In Chellappan Vs. K.P.Varughese and another (29.05.1963) the Hon’ble High Court of Kerala held that

“The power given to an appellate Court under Section 107 C.P.C. Is only part of its appellate jurisdiction. It cannot be characterised as an original jurisdiction in an appellate Court. It confers power on the appellate Judge not only to dispose of the appeal on its merits, but also to pass any interlocutory or incidental orders deemed necessary hi the circumstances of the case to maintain the status quo, or to preserve the subject-matter of the appeal till the disposal of the appeal as an original Court is empowered to do in the case of suits before it. The incidental orders passed by an appellate Court in interlocutory applications moved in an appeal before it are 'orders passed in appeal' within the scope of Section 104(2) C.P.C. and cannot therefore be appealed against.”

11. In *Murari Kumar Saraf Vs. Sri Jagannath Shaw* (25.11.1993) the Hon'ble High court of Calcutta held that

“In the above reported case an application for temporary injunction was moved in the suit before the Subordinate Judge and against the disposal of that application an appeal was preferred before the District Judge. In the said appeal the second application for temporary injunction was filed by the appellants which was dismissed. Against the said dismissal appeal was preferred before the Kerala High Court. It was held there that the appeal to the High Court against an interlocutory order passed by the District Judge in an appeal under Section 104 read with Order 43, C.P.C. was incompetent and, therefore, liable to be dismissed in limine. The Ld. Advocate appearing for the petitioner as I have already noted has also referred to a decision of this High Court reported in AIR 1975 at page 377. In my opinion that decision has no bearing to the present case, as that case deals with a matter where the Ld. Munsif passed an order of injunction under Section 94(c) and (e) read with Section 151, C.P.C. pending the disposal of an application for restoration of the suit under Order 9, Rule 9 of the C.P.C. Now I come to the decision of the Goa High Court reported in 1975 at page 15. In that case the Goa High Court has held that an order of ad interim injunction passed by the Appellate Court during the pendency of appeal against dismissal of application for temporary injunction by Trial Court is not an original order but it is "an order passed in appeal" within the meaning of Section 104(2) and hence no second appeal lies against it. In this case the Goa High Court followed the decision of the Kerala High Court which I have already mentioned. ”

12. On careful perusal of above said decisions it is clear that there is no bar to entertain the petition under Order 39 Rule 1 and 2 in appeal and pass necessary orders and the same also confirmed by our own Hon'ble High Court of Madras in *Murali Gopal Vs. Kalaivanan* (12.04.2024).

13. At this juncture, it is also relevant to refer to the recent decision of the Hon'ble Supreme Court of India in Civil Appeal No 4602 of 2024 (Arising out of SLP (C) No. 6696 Of 2024) *Blooming Television Production Services India Private Limited & Others Vs Zee Entertainment Enterprises Limited* (22.3.2024). Wherein

the Hon'ble Apex Court held that

“12. Undoubtedly, the grant of an interim injunction is an exercise of discretionary power and the appellate court (in this case, the High Court) will usually not interfere with the grant of interim relief. However, in a line of precedent, this Court has held that appellate courts must interfere with the grant of interim relief if the discretion has been exercised “arbitrarily, capriciously, perversely, or where the court has ignored settled principles of law regulating the grant or refusal of interlocutory injunctions”. The grant of an ex parte interim injunction by way of an unreasoned order, definitely falls within the above formulation, necessitating interference by the High Court. This being the case of an injunction granted in defamation proceedings against a media platform, the impact of the injunction on the constitutionally protected right of free speech further warranted intervention.”

14. It is clear from the decisions referred supra that the appellate courts possess the authority to grant interim injunctions during the pendency of an appeal to ensure that the subject matter of the dispute is preserved and to prevent irreparable harm. This discretionary power is exercised judiciously, with deference to the trial court's findings, unless there is a clear indication of arbitrary or perverse decision-making.

15. Undoubtedly, the appeal is a continuation of the suit but to get a discretionary relief of temporary injunction the appellant must establish the error apparently on the face of the judgment of the trial court even though they could place sufficient evidence to prove their possession over the petition scheduled property. Further, the appellant has to show the threat of invasion by the respondents into their lawful possession and enjoyment of the schedule property. Both sides relied on catena of decisions cited supra in respect of their contentions. The appellant vehemently contended that there was a threat of dispossession, on the strength of the decree passed by the trial court in O.S 266 of 2015.

16. It is the case of the appellant/plaintiff that originally the suit property Koliyanur Survey No. 268/3B Ac 0.38 cents belonged to Natarajan, father of the plaintiff and father-in-law of 1st defendant, and the same was allotted to Subramaniya Kounder, brother of plaintiff and Husband of 1st defendant as "C" Schedule in partition. After the demise of Subramaniya Kounder, the only Legal heir 1st defendant succeeded the suit property, the plaintiff purchased the suit property and some other property to an extent of Ac 1.10 cents vide Doc No 627/2000, and the 1st defendant also executed a rectification deed vide Doc No. 1725/2005 on 8.9.2005. The plaintiff obtained Patta No. 31 in his name and enjoyed the suit property.

17. The defendants in their written statement contended that the suit property originally belonged to Natarajan and the suit property allotted to the 1st defendant's husband Subramaniyam. The said Subramaniyam sold Ac 0.38 cents out of Ac 0.59 cents to his Sister Anushiya and the remaining balance is Ac 0.21 cents out of Ac 0.59 cents. The said Anushya sold her Ac 0.38 cents to one Visvanathan. The plaintiff had purchased some properties from Ammakannu on 10.5.2000. The plaintiff created a rectification deed by impersonating Ammakannu. According to the defendant, the said Ammakannu was in possession and enjoyment of the said 0.38 cents before and after the creation of the rectification deed. The 2nd defendant purchased Ac. 0.39 cents from 1st defendant for valid consideration on 25.3.2015. the defendants also filed a Counter-claim for permanent injunction alternatively deliver the possession of the suit property Koliyanur village Wet S.No 268/3B 0.15.5 ares viz Ac 0.39 cents and declaration of rectification deed as null and void.

18. An interim injunction is a temporary Court order designed to prevent an action from taking place or to compel a specific action until a full trial can take place. Such orders are often used in cases where immediate harm could result without prompt judicial intervention and these orders play a key role in protecting interest pending

legal review. The essence of an interim injunction is its temporary nature, acting as a legal pause button to maintain the status quo until a final decision is made.

19. In this context, it is necessary to examine whether the petitioner has established that an interim injunction is obtainable in his favour. The petitioner has filed a suit seeking declaratory relief and as a result, relief of permanent injunction, claiming ownership of the suit property Koliyanur Village S.No.268/3B Ac.0.38 cents. The petitioner/appellant relied on Sale deed dated 10.05.2000 and rectification deed dated 08.09.2005, and proved his possession he relied on patta stands in his name. In the same case, the respondent claimed relief of permanent injunction in respect of property mentioned in counter claim, Koliyanur village S.No.268/3B Ac.0.39 cents with specific boundaries, and seek relief of declaration to declare the rectification deed dated 08.09.2005 as null and void.

20. The main argument of the petitioner is that the respondent himself did not confirm that they are in possession of the property specified in the counter claim on the date of filing the counter claim, which why he has also sought relief of recovery of possession, as an alternative relief. The plaintiff has filed Ex.A3 Patta no.31 to prove his possession, in it, it is shown that hec.0-15.50 in S.No.268/3B is in the name of the plaintiff Sivagnanam as on 09.04.2015. It is shown in Ex.A4 that the 2nd defendant purchased hec.0-15.50 Ac.0.39 cents from the 1st defendant Ammakannu on 25.03.2015 in the same S.No.268/3B. In Ex.B1 the online Chitta obtained on 10.02.2021 shows that S.No.268/3B Hec.0-15.50 is in the name of the 2nd defendant Senthilkumar. In Ex.B4 S.No.268/3B is shown in the FMB. But it is not a proof that the defendant is in possession of S.No.268/3B. Ex.B6, B7 Kist receipts has been paid for fasali 1430, 1432. Accordingly it has been paid for 2020 and 2022 only which is after filing of the suit.

21. The learned counsel appearing for the petitioner submitted that the trial Court should have considered who was in the possession of the suit property on or shortly before the date of filing the suit. The learned counsel submitted further that the learned trial court was wrong to conclude that the respondent was in possession of the suit property on the basis of the document filed by the defendants which are obtained after filing the suit without cancelling the patta granted to the petitioner.

22. In view of the above discussion, this Court finds that there is merit in that arguments. Therefore, this appellate Court opined that there is a serious question to be decided that being there is a legal issue to be decided. So the petitioner established prima facie case in his favour. In this situation, this Court finds that the balance of convenience is in favour of the petitioner as the respondent who has obtained a permanent injunction would only be affected, if he intefered with the plaintiff's possession. In the event of an inteference thereon by the respondent, the petitioner would have to suffer irreparable loss in as much as he would stand deprived of the user of the said land.

23. In the light of the observations, made in the proceeding paragraphs, the petitioner has succeeded in establishing in his favour a clear prima facie case, balance of convenience and irreparable injury, necessary for grant of interim injunction, against the respondent and decide the point accordingly.

In the result, the interim injunction application is therefore allowed. The respondent is restrained during the pendency of the present appeal from interfering into the peaceful possession of the petitioner over the disputed land. The petitioner is directed not to waste, alienate the suit property and preserve the same till the disposal of the appeal. No cost.

Dictated to the Steno-Typist directly, typed in computer by her, corrected and pronounced by me in Open Court, this the 20th day of December 2024.

Sd/-A.Tamilselvan,
I Additional Subordinate Judge,
Villupuram(FAC).

Enclosure:-

List of Petitioner side Witness and Exhibit :-
(Nil)

List of Respondent side Witness and Exhibit :-
(Nil)

Sd/-A.Tamilselvan,
I Additional Subordinate Judge,
Villupuram(FAC).