

**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.1/2024

in

A.S.No.48/2024

(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 41 Rule 5 r/w. 151 of CPC praying to stay the operation and execution of the decree in the cross suit dated 16.08.2024 in OS.No.266/2015 on the file of the Additional District Munsif Court, Villupuram pending disposal of the appeal and the same may be passed exparte as otherwise the very purpose of filing this IA 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 his 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 opportunity to him to prove the same 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 his 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 however the trial Court had dismissed his suit on the ground that he have not proved that the document is not forged document and he is not in possession of the property without any discussion whatsoever and thereby granted the decree in favour of the respondent in the cross suit filed by him and now taking advantage of the decree the respondent is attempting to take forcible possession of the property and if he is allowed to do so he will suffer irreparable loss and he is advised to state that he have a fair chance of success in the appeal and interest of justice requires that the decree should be stayed as otherwise he will suffer irreparable loss and he therefore prays that this Hon'ble Court may be pleased to stay the operation of the decree in the cross suit dated 16.08.2024 in OS.No.266/2015 on the file of the Additional District Munsif Court, Villupuram pending disposal of the appeal and the same may be passed exparte as otherwise the very purpose of filing the IA 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 petition on hand deserves dismissal with costs and the respondent does not admit any of the allegations in the affidavit that are not admitted and the

petition on hand is to stay the operation and execution of the decree in the cross suit on the file of the ADM, Villupuram and the petitioners should have known that the trial Court had found that the respondent is in possession and enjoyment of the suit property and as such the allegation in the petition “to stay the operation and execution of the decree in the cross suit is not only superfluous and is surprising” and the respondent had filed a detailed counter in IA.2/2024 in AS.49/2024 and since the suit property and the parties are the same and that appeal had arisen out of the cross suit and the allegation repeated that the petitioner is in possession and enjoyment is absolutely false and when the alleged rectification deed through which the title is sought to be obtained is itself in jeopardy and the question of having a title and thereby claiming declaration does not arise and the allegation in the affidavit that the respondent is attempting to take forcible possession of the property and if he is allowed to do so, the petitioner would suffer irreparable loss is nothing but terminological inexactitude and the interest of justice requires the wholesale dismissal of the petition of both the petitions with compensatory costs and the other allegations in the affidavit that are not admitted are specifically denied and the respondent therefore prays that the petition may be dismissed with exemplary 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 and defendant in the counter claim therein filed the present appeal and interlocutory Application No. 1 of 2024 seeking stay of the decree 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 and also the appellate Court could not stay the decree passed by the trial Court. 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, the learned counsel for the petitioner submitted that the petitioner proved his title by the registered sale deed dated 10.05.2000 and the rectification deed dated 08.09.2005 executed by the 1st defendant/1st plaintiff Ammakannu and the petitioner established his possession at the time of filing suit

through Patta no.31 issued by the revenue authority. The learned counsel submitted further that the learned trial Court miserably failed to consider the document filed by the petitioner and dismissed the suit filed by the petitioner and decreed the counter claim filed by the respondent. The learned counsel for the petitioner submitted that on the strength of decree granted by the learned trial Court, the respondent tried to disposes the petitioner. So, the stay of operation of the decree granted by the learned trial Court is necessary. The learned counsel relied the decision rendered by Hon'ble Bombay High Court in Mr.Suhas Janardan Chavan and Another Vs. Rajesh Housing Private Limited and Another (28.08.2019).

10. Undoubtedly, the appeal is a continuation of the suit but to get a discretionary relief of temporary injunction or stay of the decree 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.

11. 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.

12. 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 Subramaniam. The said Subramaniam 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.

13. The criteria for granting a stay under Order 41 Rule 5 of the CPC involves satisfying certain conditions that ensure balance between the right of the appellant and respondent. The purpose of the stay is to prevent injustice during the pendency of the appeal. The general rule of Order 41 Rule 5 CPC is filing an appeal does not automatically stay the execution of a decree or order. A stay can be granted only upon an application made by the appellant and at the discretion of the appellate Court. The appellate Court can stay the execution of the decree or proceedings under appeal to prevent irreparable harm or injustice. The appellant must demonstrate a sufficient reason for the Court to grant a stay. The appellant must prove that they would suffer substantial loss or irreparable injury if that stay is not granted. The Court must ensure that the balance of convenience is in favour of the appellant. The appellant must establish a prima facie case in their favour showing that the appeal is not

frivolous and has a reasonable chance of success. The Court may direct the appellant to furnish security for the due performance of the decree or to safeguard the interest of the respondent during the pendency of the appeal.

14. In Mr.Suhas Janardan Chavan and Another Vs. Rajesh Housing Private Limited and Another (28.08.2019) the Hon'ble Bombay High Court held "46. Invariably, as Order 41 Rule 5 mandates, mere filing of the appeal does not arrest the operation of the decree but pending the appeal, if the decree was executed, that would render the appellant's possible success in the appeal nugatory – an empty formality or ritual. So the code, under Order 41 Rule 5 contemplates or provides for maintaining status quo ante until the suit proceedings reach their logical conclusion. For the appeal is in the continuation of the original proceedings. But that prohibition of the status quo ante comes with conditions attached including compensation, as stated in Order 41 Rule 5(3)(c). In Atma Ram Properties Pvt Ltd Vs. Federal Motors Pvt Ltd. (2005) 1 SCC 705 the Hon'ble Supreme Court emphasized the importance of balance of convenience and furnishing security while granting a stay. In Sri Chamundi Mopeds Ltd. Vs. Church of South India Trust Association (1992) 3 SCC 1, the Hon'ble Supreme Court observed that granting a stay under Order 41 Rule 5 CPC does not nullify the decree but merely postpones its execution.

15. In this context, it is necessary to examine whether the petitioner has established that a stay 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.

16. 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.

17. 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.

18. 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 interfered with the plaintiff's possession. In the event of an interference 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.

19. In the light of the observations, made in the preceding 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 stay for the operation of the decree passed by learned trial Court in OS.No.266/2015 dated 16.08.2024 against the respondent and decide the point accordingly.

In the result, the petition is allowed. The operation of the decree passed by learned Additional District Munsif in OS.No.266/2015 dated 16.08.2024 is stayed till the disposal of the appeal. No cost. The petitioner is directed to not to waste, alienate the suit properties and preserve the status quo till the disposal of the appeal.

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).