

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.12.2016

PRONOUNCED ON 22.12.2016

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.322 of 2013

A.V.K.Raja

.. Plaintiff

vs.

1. N.S.Arumugam
2. A.Rajathi Ammal

.. Defendants

Civil Suit filed under Order IV Rule 1 of Original Side Rules 1956 read with Order VII Rule 1 CPC praying for the following judgment and decree against the defendants.

a) Directing the 1st defendant to pay the plaintiff punitive damages in the sum of Rs.15,00,000/- for the defamation caused by the libelous and scandalous activities of the 1st defendant;

b) for a permanent injunction restraining the defendants, their men, agents or servants, from interfering with the plaintiff's peaceful possession and enjoyment of the properties being the lands of an extent of 39 cents comprised in Survey No.127/7, R.S.No.127/7A and T.S.No.69, Block No.56

of Koyambedu Village, Egmore-Nungambakkam Taluk, presently bearing Door No.3, Jawaharlal Nehru Salai, Koyambedu, Chennai – 600 107, more fully described as item – 1 of the schedule hereunder and the property of an extent of 4 cents comprised in Survey No.123/3, presently comprised in T.S.No.71, Block No.56 of Koyambedu Village, bearing Door No.3/1, Jawaharlal Nehru Salai, Koyambedu, Chennai – 600 107, more fully described as Item-2 of the schedule hereunder;

c) costs of the suit;

For Plaintiff : Mr.V.G.Sureshkumar

For defendants : Ex-parte

J U D G M E N T

This suit has been filed claiming damages of Rs.15,00,000/- and also permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the property more fully mentioned in the schedule of the suit.

2.The brief facts of the case of the plaint are as follows:

The suit property was originally purchased by the plaintiff, his mother and brother in the year 1995. Subsequently, the plaintiff's mother and his

brother settled their 2/3rd undivided share in the property in favour of the plaintiff on 27.08.2012. Therefore, the plaintiff is the absolute owner of the property and ever since, he has been possession and enjoyment of the said property. The defendants claim to have entered into an agreement of sale for the purchase of a portion of the suit property from one R.Velayudham and others in the year 1990. In this regard, the suit in C.S.No.613 of 1996 has been filed for specific performance and the said suit was dismissed for non-prosecution long back. It is the further case of the plaintiff that 4 cents of adjacent land to the plaintiff's property was purchased by the plaintiff's brother in the year 1995 by way of a registered document. Plaintiff's brother Umapathy settled the above property in favour of the plaintiff on 27.08.2012. The plaintiff thus became absolute owner of the entire property. The suit filed in O.S.No.1073 of 1996 by the second defendant to enforce the above agreement was also dismissed for non-prosecution. The revenue records have also been changed in the name of the plaintiff. When the plaintiff commenced development in the property owned by him, about 6 months back, the first defendant, who has no right whatsoever in the property made an attempt to interfere in the construction activity and also made scandalous allegation against the plaintiff by giving a complaint to the police. The first defendant has given

security by the Orders of the High Court. Taking advantage of the same, the defendants tried to interfere with the possession of the plaintiff with the security officer and also made scandalous allegations against the plaintiff. Therefore, the plaintiff has issued a legal notice to the defendants on 18.04.2013 and 24.04.2013. However, no reply was sent. In view of the allegations which was scandalous, the plaintiff was put to great mental agony. Hence the suit for damages and for permanent injunction.

3. Though notice was served on the defendants long back, they have not chosen either to appear in person or through counsel. Therefore, they were set *ex parte* by this Court on 13.10.2014.

4. On the side of the plaintiff, plaintiff examined himself as P.W.1 and Ex.P.1 to Ex.P.18 were marked.

5. Heard the learned counsel for the plaintiff and perused the records.

6. P.W.1 in his evidence has spoken about the purchase of the property in the year 1995 by his mother, brother and himself and also

spoken about the purchase of 4 cents of adjacent land by his brother and subsequently settlement of the property in his favour. He has also spoken about his continuous possession of the property.

7. Ex.P.1 to Ex.P.18 marked on his side. Ex.P.2 to Ex.P.4, when carefully perused, item-1 of the suit property was purchased by the plaintiff, his mother and his brother. They purchased the above property from one R.Velayudham, R.Sundararajan, R.Deivayani, R.Prema and R.Shantha. Ex.P.6 shows purchase of the second item of the property by the plaintiff's brother. Ex.P.7 Deed of Settlement dated 28.08.2012 clearly show that the plaintiff's mother and brother have settled their share of the property in favour of the plaintiff. From these documents, the plaintiff proved his title to the suit properties. The suit filed by the first defendant as could be seen from Ex.P.5 was not prosecuted. The pleading in the plaint in Ex.P.5 by the first defendants also does not show that they have been given possession of the property based on the alleged sale agreement dated 25.07.1990. From the above documents, it is very clear that the possession is also not with the defendant. The revenue records were filed as Ex.P.10 to Ex.P.13. Those documents are only xerox copies. Therefore, the same cannot be given any importance in the absence of

originals or compliance of Section 65 of the Indian Evidence Act for production of secondary evidence. The legal notice Ex.P.17 and 18 sent by the plaintiff also clearly show that he is exercising right over the suit property and the same has not been replied.

8. Even though the original revenue records have not been filed, from the title deeds of the plaintiff, it can be concluded that the plaintiff is in possession of the suit properties. Once, the title is established by the plaintiff, in respect of vacant land the possession automatically follows the title. Therefore, the defendants without any semblance of right over the suit property, have no right whatsoever to interfere with the possession and enjoyment of the suit property by the plaintiff. The allegations in the plaint and the evidence of the plaintiff clearly establishes the fact that threat of the defendants is continuing over the suit property. Therefore, this Court is of the view that the plaintiff is certainly entitled for permanent injunction as prayed for against the defendants.

9. As far as the damages is concerned, though it has been stated by the plaintiff that the first defendant is making defamatory allegations, as a result the plaintiff has suffered damages, it has to be noted that mere

lodging some complaint against the defendants in the police station on the basis of the right in the property, same cannot be concluded as a defamatory statements. Unless and until, malice, wrong act with intention on the part of the defendants are established by the plaintiff, damages cannot be ordered automatically. That apart, no other witnesses, whatsoever have been examined by the plaintiff to prove that the defendants have spread defamatory allegations against the plaintiff. In the absence of evidence as to the malice and wrongful act with intention on the part of the defendants, damages cannot be ordered. Hence, this Court hold that the plaintiff is not entitled for damages.

10. Accordingly, the suit is decreed for permanent injunction against the defendant with costs. As far as damages is concerned, this suit is dismissed. No costs.

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Index : Yes/No
Internet : Yes/No

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N.SATHISH KUMAR, J

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Pre Delivery Order

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