



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.11.2017

CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
C.M.A. (MD) No.740 of 2017
and
C.M.P. (MD) No.8015 of 2017

Gopalakrishna Nair

... Appellant

Vs.

Muthiah

... Respondent

Prayer: Appeal filed under Section 43 Rule 1(r) of the Civil Procedure Code, to set aside the judgment and decree dated 17.06.2017 made in I.A.No.93 of 2017 in O.S.No.50 of 2017 on the file of I Additional District Court, Tirunelveli.

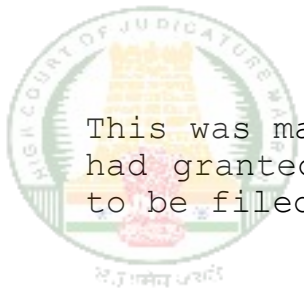
For Appellant	: Mr.N.Ganagasapapathy
For Respondent	: R.J.Karthick

JUDGMENT

The appellant Gopalakrishna Nair purchased the suit property from one Aravind Thatchan Nair on 11.05.2012. The respondent herein namely Muthiah is already having a pending civil dispute with the said Aravind Thatchan Nair.

2.The respondent herein had filed O.S.No.143 of 2007 against the said Aravind Thatchan Nair, on the file of the District Munsif Court, Ambasamudram. The appellant herein filed an application in I.A.No.851 of 2012 to implead himself in the said suit but the same was dismissed on 11.01.2013. It is now contended by the appellant herein that the suit in O.S.No.143 of 2007 itself has been dismissed on 19.06.2013. It is however claimed by the counsel for the respondent that the same was decreed on 19.06.2013.

3. It is beyond dispute that after purchasing the suit property from one Natarajan, the appellant herein applied for including his name in the revenue record. A joint patta was issued along with the name of the respondent. It is relevant to mention here that the name of the vendor of the appellant was never entered in the revenue record at any point of time. Aggrieved by the inclusion of the respondent's name in the revenue record, the appellant sought deletion of the name of the respondent. The District Revenue Officer did not accede to the said request, but on revision, the District Revenue Officer agreed with the contention of the appellant herein and deleted the name of the respondent. This was challenged by the respondent herein in W.P(MD).No.23849 of 2016 and an interim order of status-quo was granted on 02.01.2017 in W.M.P.No.17188 of 2016.



This was marked as EX.R-18 before the Trial Court. After this Court had granted an interim order of status-quo, the present suit came to be filed in April 2017.

4.The learned counsel appearing for the appellant made his submission that the appellant was not aware of the grant of interim order of status-quo passed by this Court.

5.It cannot be disputed that in the revenue record, the vendor of the appellant was not shown as a Pattadar. There was already a civil dispute between the respondent and the said Natarajan. The appellant is only a subsequent purchaser. The Trial Court has given a specific finding that the Adangal alone can prove possession. Moreover, the Trial Court has also given a finding that the plaintiff has not satisfactorily traced his title. In order to make out a *prima-facia* case, not even a scrap of paper was produced to show that the appellant is in possession.

6. Since this Court, sitting on the Writ side, granted an interim order of status-quo in January 2017, this Court called upon the Registry to verify as to whether the appellant herein entered appearance in the said Writ proceedings. It is now informed that on 16.03.2017, a Vakalath was filed on behalf of the appellant in the said proceedings. But, in the present plaint in O.S.No.50 of 2017, there is no reference to the said writ proceedings.

7.The Trial Court has given a finding that the plaintiff has approached this Court with unclean hands. He did not refer to I.A.No.851 of 2012 filed by him in O.S.No.143 of 2007, on the file of the Principal District Munsif Court, Ambasamudram. The conduct of the plaintiff stands now further aggravated. This Court is constrained to give a finding that the appellant has suppressed the fact that the High Court is already seized of the matter in W.M.P (MD).No.17188 of 2016 in W.P(MD).No.23849 of 2016. Injunction is an equitable remedy. The person, who seeks such an equitable remedy, must come with clean hands. This Court holds that the appellant herein has suppressed the material facts in the affidavit filed in support of the injunction application. In any event, the question of granting an interim order that would override the interim order granted in W.M.P(MD).No.17188 of 2016 in W.P(MD).No.23849 of 2016, does not arise. The order of the Trial Court dismissing I.A.No.93 of 2017 in O.S.No.50 of 2017 is very much justified. It does not require any interference at the hands of this Court. There is no merit in this appeal. Accordingly this Civil Miscellaneous Appeal is dismissed with a cost of Rs.5,000/-. Consequently, C.M.P.(MD) No.8015 of 2017 is closed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar



To

1.The I Additional District Court, Tirunelveli.

2.The Section Officer, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1cc to Mr.R.J.KARTHICK,Advocate,SR.88295

+1cc to Mr.N.GANAGASAPAPATHY,Advocate,SR. 88785

C.M.A. (MD) No.740 of 2017
and
C.M.P. (MD) No.8015 of 2017
20.11.2017

KMI/DSS

KK/SV MMS/SAR 3/26.02.2018/ 3P- 5C/