

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Tuesday, the Twenty Sixth day of March Two Thousand Nineteen

PRESENT

THE HON`BLE MR JUSTICE V.BHARATHIDASAN

CMP No.6355 of 2019

in SA.No.752 of 2018

TAJUDEEN.J

[PETITIONER]

Vs

1 RAJA REDDY

[RESPONDENT]

2 MOHAMMED ZACKARIA

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass an order of temporary injunction restraining the first respondent from putting up any new or fresh constructions or alter the nature and character of the property morefully described in the schedules C and D forming the subject matter of the suit in OS No.25/2004 on the file of the Subordinate Judge, Poonamallee, (in CMP.No.6355/2019) pending disposal of the above SA No.752/2018.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.P.SUBBIAH, Senior Counsel for M/S.D.MANIMARAN, Advocate for the petitioner the court made the following order:-

The present petition has been filed seeking injunction restraining the first respondent from putting up any new or fresh constructions or alter the nature and character of the property in respect of 'C' and 'D' schedule properties, which is the subject matter of O.S.No.25 of 2004, on the file of the learned Subordinate Judge, Poonamallee.

2. The petitioner is the second defendant in the suit in O.S.No.25 of 2004. The said suit has been filed by the first respondent seeking for the following reliefs:

a) Directing the defendant severally or jointly to pay a sum of Rs.3,03,000/- as damages for blockading the first respondent's access to his 'C' schedule plot through 'D' schedule layout road;

b) Granting of mandatory injunction, directing the appellant herein to remove all the barbed wire fencing and other obstructions put across the 'B' schedule Layout road;

c) Granting mandatory injunction directing the defendants to remove the name board "Bakria Mansi" on the plaintiff's gate on plaintiff's 'C' schedule plot;

d) Granting permanent injunction restraining the defendants, their son, servants and agents from interfering with the plaintiff's peaceful possession and enjoyment of the 'C' schedule plot.

3. The appellant herein also filed another suit in O.S.No.501 of 2000 on the file of the learned Subordinate Judge, Poonamallee seeking for the following reliefs:

a) for a permanent injunction restraining the defendant, men, agents and servants or anybody claiming through him not to interfere with the plaintiffs peaceful possession and enjoyment of the suit schedule property in any manner comprised in S.No.425 part of 81 mogappair village, Ambattur Taluk, covered under Sale Deeds 5406/1996 and 5344/1996 dated 31.10.1996 on the file of the S.R.O. Konnur, Chennai including Promboke land with pucca compound wall in enjoyment of the Plaintiff.

4. The Trial Court jointly tried both the suits filed by the first respondent and the appellant herein and decreed the suit filed by the first respondent and dismissed the suit filed by the appellant. Challenging the common judgment made in O.S.Nos.25 of 2004 & 501 of 2000, the appellant has filed two appeals viz., A.S.No.89 of 2010 and A.S.No.33 of 2011 on the file of the learned II Additional District Judge, Poonamallee. The learned II Additional District Judge, Poonamallee by a common judgment dated 23.11.2017, dismissed both A.S.Nos.33 of 2011 & 89 of 2010. Challenging the said judgment and decree, the present second appeal has been filed. Pending appeal, the appellant has sought for an injunction as cited above.

5. Learned senior counsel appearing for the appellant submitted that even though the appellant sought for an order of injunction in respect of C and D schedule property, now the appellant restricting the prayer only in respect of D schedule property.

6. Per contra, learned counsel appearing for the first respondent contended that, pending appeal, the first respondent has filed E.P.No.37 of 2012 and executed the decree on 22.10.2018. Thereafter, the petitioner obtained an order of interim stay on 02.11.2018. Since the decree has been executed prior to the order of interim stay, the stay petition was dismissed as infructuous by this Court on 19.12.2018.

7. It is admitted by both the counsel that, D schedule property has been declared as road, by both the courts below. In the above circumstances, I am inclined to grant an order of injunction restraining both the appellant as well as the respondents from putting up any construction in the D schedule property, pending disposal of the suit.

8. With the above direction, the Civil Miscellaneous Petition is closed.

-sd/-
26/03/2019

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE SUBORDINATE JUDGE
POONAMMLLEE.

2 THE II ADDNTIONAL DISTRICT
JUDGE, POONAMMLLEE.

C.C. to M/S.D.MANIMARAN Advocate on payment of necessary charges

Order

in

CMP No.6355 of 2019

in SA.No.752 of 2018

Date :26/03/2019

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