

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 06.08.2019	Delivered on 27.08.2019
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Application No.1993 of 2019
and O.A. No.124 of 2019
in CS No.117 of 2019

G.Paul Pandian

... Applicant in A.No.1993/2019
& 5th Respondent in OA.124 of 2019

Vs

1. A.V.Radhakrishnan

... 1st Respondent in A.No.1993/2019
& Applicant in OA.124 of 2019

2. The Regional Deputy Commissioner (Central)
Greater Chennai Corporation,
Second Cross Street (East),
Pulla Avenue, Anna Nagar,
Chennai 600 030.

3. The Executive Engineer,
Ward -X, Corporation of Chennai,
Chennai 600 024.

4. The Zonal Officer,
Ward -X, Corporation of Chennai,
Chennai 600 024.

5. The Tahsildar,
Aminjikarai,
Chennai District.

... Respondents 2 to 5 in A.No.1993/2019
& Respondents 1 to 4 in OA.124 of 2019

Prayer in Appl. No.1993/2019: Application is filed under Order XIV Rule 8 of the Original Side Rules read with Order 39 Rule 4 of the Code of Civil Procedure, praying to vacate the order of interim injunction granted by this Court in OA. No.124 of 2019 in CS No.117 of 2019 dated 18.02.2019.

Prayer in O.A. No.124/2019: Application is filed under Order XIV Rule 8 of the Original Side Rules read with Order 39 Rule 1 & 2 of the Code of Civil Procedure,

For Applicant : Mr.Mohan
Applicant in A.No.1993/2019 for M/s.M.Murali
& 5th Respondent in OA.124 of 2019

For Respondents
1st Respondent in A.No.1993/2019
& Applicant in OA.124 of 2019 : Mr. K.V.Babu

Respondents 2 to 4 in A.No.1993/2019
& Respondent 1 to 3 in OA.124 of 2019 : Mr. Karthikaa Ashok

5th Respondent in A.No.1993/2019

& 4th Respondent in OA.124 of 2019 : Mr. Sricharan Rangarajan

COMMON ORDER

The Original application has been filed seeking an order of injunction restraining the respondent from interfering with possession of the applicant/plaintiff of the suit schedule property, which according to the plaintiff is situate at Old Survey No.141/4, then Survey No.141/2 bearing Patta No.1279 measuring an extent of 23 ½ cents within certain specific boundaries. The original suit is one for declaration of title of the plaintiff, for permanent injunction and for other reliefs.

2. It is the case of the plaintiff that the suit property along with larger extent of land situate in Survey No.141/2 of Koyambedu Village, Aminjikarai Taluk, Chennai District, belonged to one Munusamy Naicker. The plaintiff/applicant would claim that he had purchased an extent of 35½ cents, out of the 2 acres 25 cents from Selvaraj and others, heirs of Munusamy Naicker, under a Sale Deed dated 27.08.1981. It is the further claim of the applicant that he had sold an extent of 12 cents to one Paneerselvam and he is in possession of 23 ½ cents in Survey No.141/2.

3. The plaintiff would further claim that during the year 2000, the officials from the officers of defendants 1 to 3 in the present suit visited the suit property and made certain enquiries. During the course of the said enquiries, the plaintiff found that the visit was pursuant to a complaint made by some persons who are inimically disposed towards him, claiming that he had encroached upon a public way. The Title Deeds and the Revenue Records relating to the property along with a detailed representation made by the plaintiff were produced, before the defendants 1 to 3 on 24.09.2000.

4. The plaintiff thereafter, filed WP No.17159 of 2000 in this Court for a Writ of Mandamus forbearing the defendants herein interfering with the plaintiffs ownership and possession over the suit land. An interim order of injunction was granted in WMP No.24747 of 2000. Since the interim order dated 04.10.2000, made in WMP No.24747 of 2000 was not complied with, the plaintiff filed Contempt Petition No.654 of 2000. Pending the said Contempt Petition, the Revenue Divisional Officer, Chennai was directed to inspect the land on 03.11.2000 and submit a report as to the correct location and classification of the property. The Revenue Divisional Officer after inspection and verification of the records, submitted a report on 17.11.2000, stating that the suit land is currently comprised in T.S.No.17 in Block No.

33 of Koyambedu Village, which was previously correlated to the Old Survey No.141/2. It was also further reported that the said lands stood registered in the name of the applicant in Patta No.1279. It was, however, reported that TS.No.17 in Block 33 of Koyambedu Village had been classified as Natham Poromboke, as per the current classification.

5. Based on the said report, the Contempt Petition was disposed of by this Court on 15.12.2000, recording the statement made by the learned Government Pleader at Survey No.141/2 which forms part and parcel of TS. No.17 in Block No.33 of Koyambedu Village is a patta land, it was also observed that the Government cannot interfere with the possession of the applicant by a mere notification under the Tamil Nadu Survey and Boundaries Act 1923. It was also made clear that it is open to the Government to acquire the land, if so advised. The Writ Petition in WP No.17159 of 2000, came to be disposed of by this Court on 05.12.2000 granting a Writ of Mandamus forbearing the respondents from interfering with the applicant right in respect of Survey No.141/2.

6. Subsequently the plaintiff/applicant filed WP No.21665 of 2012 seeking a Mandamus directing the defendants to effect suitable corrections

in the Revenue Records. An interim order of status-quo was granted pending disposal of the said Writ Petition. Even during the pendency of the said Writ Petition, the defendants 2 and 3/respondents 2 and 3 issued a notice on 06.04.2015, calling upon the applicant/plaintiff to remove the encroachment within three days. This led to the plaintiff/applicant filing yet another Writ Petition in WP No.10515 of 2015 challenging the said notice. Another Writ Petition with similar prayer was filed by the adjacent owner in Writ Petition in WP No.24450 of 2015, both the Writ Petitions were disposed of by a common order dated 09.01.2017 directing the defendants to demarcate the boundaries of the land of the plaintiff and proceed thereafter in accordance with law. The Writ Petition filed in WP No.21665 of 2012 was also disposed of, in view of order passed in the subsequent Writ Petition in WP No.10515 of 2015. After the disposal of the Writ Petition in WP No.10515 of 2015, the first defendant, on a misconception of the said order, issued a notice directing the plaintiff to remove the encroachment within 7 days.

7. The said notice was again challenged in WP No.5472 of 2017. By an order dated 03.03.2017 made in WP No.5472 of 2017, the defendants/respondents herein were directed again to demarcate the

property in question after affording an opportunity to plaintiff put forth his case along with the relevant documents. Subsequent to the said order an enquiry was held on 24.04.2017 followed by a joint inspection on 25.04.2017. An order came to be passed on 08.05.2017 directing the plaintiff /applicant to remove the encroachment. The said order dated 08.05.2017 was challenged in WP No.13373 of 2017. The said Writ Petition in WP 13373 of 2017 came to be dismissed by the Division Bench of this Court on 08.01.2019, wherein, the Division Bench observed that the question relating to title will have to go into only based on evidence and the same cannot be conveniently gone into in Writ proceedings. In view of the said observation of this Court, the plaintiff has come forward with the above suit seeking declaration of his title in respect of the land measuring an extent of 23 ½ cents situate in Survey No.141/2 which, according to him, is in T.S.No.17 of Block 33 of Koyambedu Village.

8. Originally the suit as well as the Original application were filed only against respondents 1 to 4 /defendants 1 to 4, the fifth defendant subsequently filed an application in Application No.1992 of 2019, seeking to implead and the said application was allowed on 13.03.2019. Thereafter the

fifth respondent/fifth defendant, namely, the newly added party had filed an Application for vacating the order of injunction granted in OA No.124 of 2019.

9. The fourth respondent has filed a counter affidavit. According to the fourth respondent, the property situate at TS No.17 Block 33 of Koyambedu Village is a narrow strip of land and runs North to South on the eastern side of Block 33 and the said land is classified as "Sarkar Poramboke" and vests with the Greater Chennai Corporation and the same being used as a Road. It is also stated that the said land is being used as an approach road to the properties situate in TS. Nos.10, 11, 12, 13, 14, 15 and 20 of Block 32 of Koyambedu Village. The claim of the petitioner that his land situate in Survey No.141/2 now forms part of TS No.17 Block 33 of Koyambedu Village is denied by the fourth respondent. According to the fourth respondent, the land that was purchased by the petitioner under the Sale Deed of the year 1981, forming part of Survey No.141/2 is now situate in TS No.19 of Block 32 of Koyambedu Village and not TS No.17 of Block 33 of Koyambedu Village. Therefore, according to the respondents, the applicant who had purchased 35 ½ cents under a sale deed dated 27.08.1981 had parted with 12 cents in favour of M/s. Rohini Ice & Cold

Storage, a partnership firm, under a Sale Deed dated 31.03.1982 and the remaining land in Survey No.141/2, which is in possession of the applicant now lies in TS No.19 of Block 32 of Koyambedu Village and not in TS No.17 of Block 33, as contended by the petitioner.

10. The impleaded party namely, the fifth defendant/respondent has filed a separate counter affidavit, wherein, he would claim that the applicant who purchased 35 ½ cents under the Sale Deed dated 27.08.1981, had sold 12 cents in favour of a partnership firm M/s. Rohini Ice & Cold Storage, under a Sale Deed dated 31.03.1982. As per the recitals in the said document, the property situate on the west of the property sold itself is shown as Common Road in S.No.141/1 and 141/2 part. Relying upon the said recital, the fifth respondent would contend that a portion of the land in S.No.141/2 fell in TS No.17 in Block 33, which is shown as a Road, the remaining portion was assigned TS No.19 in Block 32 which belongs to the applicant/plaintiff. Therefore, according to the fifth respondent, the applicant is attempting to grab the property which is being used as a road by the public in the area by utilising the confusion in the Survey Numbers.

11. The fifth respondent would also rely upon a Mortgage Deed

executed by the purchaser under the Sale Deed dated 31.03.1982 from the plaintiff wherein, it is also stated that the western boundary is a common road in Survey No.141/2 part. Therefore, according to the 5th respondent, the suit property is not situate in TS No.17 of Block 33, and therefore, the plaintiff has no right over the land which is being used as a common path way by the public. The fifth respondent would also point out that though the plaintiff/applicant had in the Writ proceedings consistently maintained that the land in his possession has been assigned TS No. 17 of Block 33, he had not chosen to disclose the Town Survey Number in the description of the property in the present suit. This according to the fifth respondent/fifth defendant would show that the plaintiff is trying to create a confusion and grab the property which is being used as a road as on ground.

12. I have heard Mr.T.Mohan learned counsel appearing for M/s.M.Murali, for the applicant/5th defendant, Mr.K.V.Babu, learned counsel for the 1st respondent/plaintiff, Mr.Sricharan Rangarajan, Additional Government Pleader for the 5th respondent/4th defendant and Mr.Karthikaa Ashok, learned counsel appearing for respondents 2 to 4/ defendants 1 to 3 in Application No.1993 of 2019.

13. It is the consistent case of the applicant that he had purchased 35 ½ cents of land in old Survey No.141/4, Survey No.141/2 of Koyambedu Village under the Sale Deed dated 27.08.1981. He would also admit that he had alienated an extent of about 12 cents out of the said 35 ½ cents under the Sale Deed dated 31.03.1982 in favour of M/s. Rohini Ice & Cold Storage, represented by its partner Mr.Paneerselvam. The said Paneerselvam, happens to be the brother-in-law of the plaintiff/applicant. According to the plaintiff, the land in remaining 23 ½ cents of land which is retained by him is in his possession and the respondents attempt to interfere with the possession of the said property. Even the petitioner had in the Writ Petitions filed by him claimed that TS No.141/2, has been assigned in TS No.17 of Block 33 of Koyambedu Village. Therefore, according to the plaintiff/applicant, the land in TS No.17 of Block 33 form part of his holding of 23 ½ cents in Survey No.141/2.

14. This claim of the applicant is stoutly opposed by the official respondents, namely respondents 1 to 4 and as well as the fifth respondent. While conceding the title of the applicant to 23 ½ cents of land in Survey No.141/2, the contesting respondents would vehemently contend that it was

not the entire extent of land in Survey No.141/2 that was renumbered as TS No.17 in Block No.33. According to the official respondents, a portion of land in Survey No.141/2 was a common pathway and that was assigned TS No.17 in Block 33. The remaining land in Survey No.141/2 was assigned TS No.19 in Block 32 of Koyambedu Village. Therefore, according to the respondents, the entire land in Survey No.141/2 does not and cannot belong to the applicant.

15. It is pointed out by the respondents that the applicant had purchased an extent of 35 ½ cents in old Survey No.141/4 and Survey No.141/2, the boundary description in the said Sale Deed are as follows:

On the West by : Land in S.No.141/2 belonging to the vendors

On the East by : Land in Survey No.141/2 and 141/4 belonging to the vendors

On the South by : Land in Survey No.141/4 B shown as Item I in the Sale Deed and 141/5

On the North by : Pathway in Survey No.141/1

Though the said sale deed refers to a plan, the plaintiff/applicant has not produced the said plan. Subsequently under a Sale Deed dated

31.03.1982, the plaintiff had sold 12 cents of land out of the land purchased by him under the earlier Sale Deed dated 27.08.1981 to M/s. Rohini Ice & Cold Storage, represented by its partner one Paneerselvam. It is the admitted case of the parties that the said Paneerselvam is the brother-in-law of the plaintiff/applicant. The boundary recitals in the property conveyed in the said Sale Deed are as follows:

On the North by : Promboke pattai in Survey No.141/1 (part)

*On the South by : Vendor's remaining property in Survey
No.141/2 (part)*

*On the East by : Vendor's remaining property in Survey
No.141/2(part)*

***On the West by : Common road in Survey No.141/1, 2
(part)***

16. It is also seen that the purchaser under the Sale Deed dated 31.03.1982 from the plaintiff/applicant had also purchased certain lands in Survey Nos.140/1 and 140/2 of Koyambedu Village from the vendors of the plaintiff/applicant and others. He had plotted out the said lands and sold smaller extent to various parties during the year 1983. A plan of the locality has been attached to the said Sale deed, a registration copy of the said Sale Deed along with the plan has been produced by the fifth respondent. A perusal of the said plan shows that Item I of the property purchased by the

plaintiff/applicant under the Sale Deed dated 27.08.1981 is situate on the immediate north of Poonamalle High Road and Item II is situate on the north of Item I property. While selling a portion of 12 cents in Survey No.141/2 under the Sale Deed dated 31.03.1982, the plaintiff/applicant had shown the western boundary as a common pathway in Survey No.141/1 and 141/2 part.

17. The purchaser under the Sale Deed was a partnership firm and which later became a proprietorship concern. The partner, namely, Mr.Paneerselvam had purchased other properties from the vendors of the plaintiff and others in the year 1982 under a Sale Deed dated 21.06.1982, the land in Survey Nos.140/1 and 140/2 which are situate on the further north of the disputed properties. He had plotted out the said lands and sold various plots to various individuals. One such Sale Deed dated 07.07.1983 has been produced by the fifth respondent. The boundary description in the said Sale Deed also shows that there is a 30 feet common road on the western side of the said plot, the plan produced shows that the 30 feet common road extents upto Poonamallee High Road on the South. This description tallies with the description in the Sale Deed dated 31.03.1982 executed by the plaintiff/applicant in favour of M/s.Rohini Ice & Cold

Storage, wherein, also western boundary is shown as a common passage.

18. The fifth defendant has also produced a memorandum of deposit of Title Deeds executed by the said Paneerselvam namely, the partner of the purchaser under the Sale Deed dated 31.03.1982 in favour of one K.Ramakrishna Reddy on 19.12.2011. The property mortgage under the said document is the property that was purchased by the partnership firm from the plaintiff/applicant under the Sale Deed dated 31.03.1982.

The boundary description in the said document is as follows:

North by: Survey No.141/1 part (promboke land having 12 feet cartrack)

South by: Property of A.V. Radhakrishnan in Survey No.141/2 (part)

East by : Property of A.V. Radha Krishnan in Survey No.141/2 (part)

West by : Common Road in Survey No.141/2 (part)

19. The above descriptions in various documents relating to title would show that a portion of Survey No.141/2 has been in use as a common pathway for various land owners, who are possessed of their lands on the north of Poonamalle High Road. Since the counsel for the applicant

vehemently contended that there is no pathway and these descriptions are not based on the actual position on land, I had required the respondents 1 to 4, to produce the Field Map of Block No.33 and Block No. 32 of Koyambedu Village. A perusal of the Field Map would show that a portion of land in Survey No.141/2 is now situate in Block No.32 and it is assigned TS No.19, the remaining portion is situate in Block No.33 and the same is assigned TS Nos.14 and 17, TS No.17 is now as classified as a Road.

20. The Correlation Register has also been produced by the respondents 1 to 4 to show that a portion of Survey No.141/2 is situate in TS No.19 of Block No.32 of Koyambedu Village and another portion of Survey No.141/2 is situate in TS No.17 of Block No.33 of Koyambedu Village. Therefore, it could be seen that after the purchase of the property by the plaintiff/applicant, he himself had sold a portion of the property to a partnership concern, of which his own brother-in-law is a partner showing the western boundary as a common pathway in Survey No.141/2. The subsequent Sale Deeds would also show that the western boundary is a common road. Therefore, from the material available on record, it is clear that a portion of land in Survey No.141/2 did form part of the Road and has now been assigned TS No.17 in Block 33 of Koyambedu Village. The

same is admittedly being used as a Road by the owners of lands situate further north of the applicants property to reach Poonamallee High Road on the south.

21. The plaintiff's/applicant's claim is against the recitals in the Sale Deeds executed by him. I therefore, find that the plaintiff/applicant has not made out a prima facie case for grant of an injunction, moreover, the issue being raised in various Writ Petitions earlier and the reliance placed by the plaintiff/applicant in the orders pronounced in the two Petitions namely, Contempt Application No.654 of 2000 and the Writ Petition in WP No.17159 of 2000, cannot be read in isolation so as to confer title on the entire extent of Survey No.141/2 on the applicant/plaintiff. A copy of the Village Register produced by the learned Government Pleader appearing for respondents 1 to 4 would also show that Old Survey No.141/4 became Survey No.141/2 and extent of land in Survey No.141/2 was about 2 acres and 32 cents. The plaintiff had purchased only an extent of 35 ½ cents on which he had sold about 12 cents, therefore, the claim of the plaintiff/applicant that the entire Survey No.141/2 has been assigned TS No.17 of Block 33 cannot be correct.

22. I therefore, find that the plaintiff/applicant has not made out a prima facie case for grant of an injunction. The balance of convenience is also not in favour of the plaintiff, more so, when he himself had shown the western boundary of the property as a common pathway even in the year 1982, when he sold a portion of the property to M/s. Rohini Ice & Cold Storage. In the Sale deed executed by the brother-in-law of the plaintiff on 07.07.1983, it is seen that this common pathway served as an access to various land owners of the northern side of the Poonamalle High Road.

23. In view of the above discussion, the interim order of injunction granted in OA No.124 of 2019 on 18.02.2019 is vacated and OA No.124 of 2019 will stand dismissed. Application No.1993 of 2019 is allowed. However, in the circumstances of the case, there will be no order as to costs. It is made clear that any finding rendered above will not affect the case of the parties in the main suit.

Index : Yes/No
Internet: Yes/No
Speaking order/Non Speaking order
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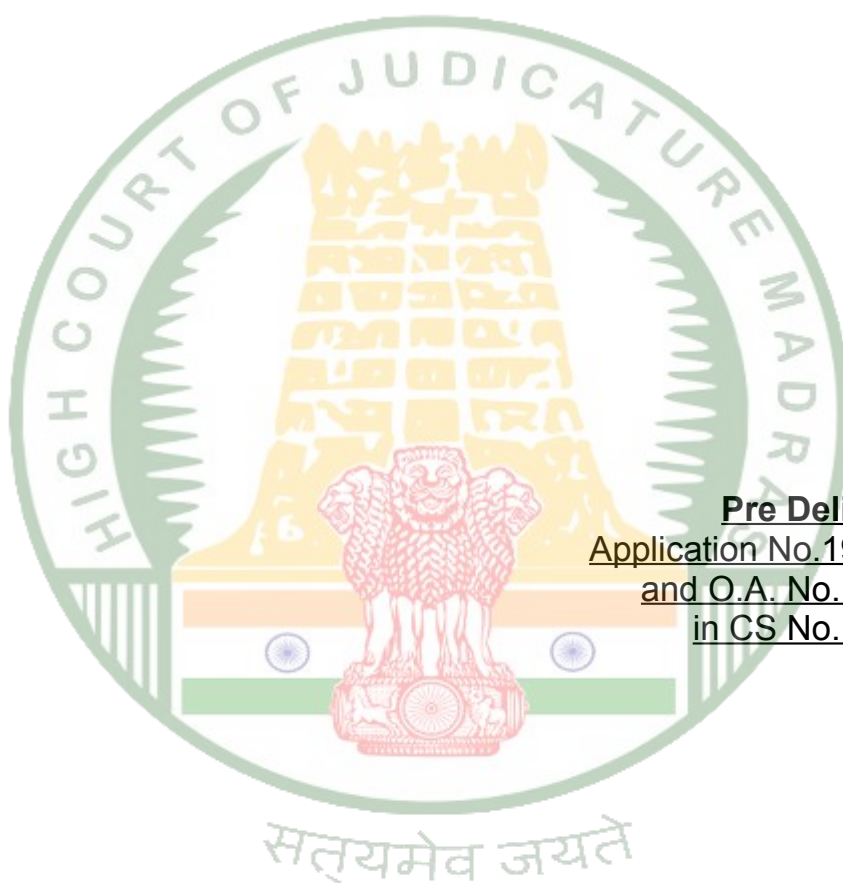
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27.08.2019

A.No.1993 of 2019 & OA. No.124 of 2019
in CS No.117 of 2019

R.SUBRAMANIAN,J.

jv



Pre Delivery Order
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