

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.Nos.4691 & 4694 of 2019
and C.M.P.Nos.26653, 26658, 26664 & 26665 of 2019

Dr.C.Athimuthu
S/o.E.Chairman Nadar
3/457/B, Kamarajar Street
Kanakamma Chatram
Thiruthani Taluk
Thiruvallur - 631 204 .. Appellant/Plaintiff
in both appeals

Vs.

Dr.M.Athi Rathinam
W/o.C.Athimuthu
No.5, Raghavendra Street
Jawahar Nagar
Thiruvallur - 602 001 .. Respondent/Defendant
in both appeals

Common Prayer: Civil Miscellaneous Appeal filed under Order XLIII Rule (1) CPC, against the fair and decretal order dated 24.07.2019 passed in I.A.Nos. 2 & 3 of 2019 in O.S.No.56 of 2019 on the file of the I Additional District Court, Thiruvallur.

For Appellant
in both appeals : Mr.G.A.Thiyagarajan
For Respondent
in both appeals : Mr.A.R.Suresh

COMMON JUDGMENT

The fair and decretal order dated 24.07.2019 passed in I.A.Nos. 2 & 3 of 2019 in O.S.No.56 of 2019 on the file of the I Additional District Court, Thiruvallur, is under challenge in the present civil miscellaneous appeals.

2. The appellant herein is the plaintiff in the suit and the suit was instituted for declaration and permanent injunction. Along with the suit, the appellant/plaintiff filed two petitions under Order 39 Rule 1 and 2 CPC, viz., I.A.No.2 of 2019 seeking ad interim injunction restraining the respondent

from alienating, encumbering and dealing with the schedule property pending disposal of the suit and I.A.No.3 of 2019 seeking ad interim injunction restraining the respondent for interfering with the peaceful possession and enjoyment of the suit property. Though an ex parte injunction order was granted initially, after adjudication of the interlocutory applications in details, the applications were dismissed. Thus, the present appeals are filed by the appellant/plaintiff.

3. Admittedly, the suit is for declaration on the ground that the appellant/plaintiff is the absolute owner of the property. In alternate, the appellant/plaintiff prayed for title by way of adverse possession. The suit property is a vacant land measuring 4800 sq.ft. in Survey No.160/2A and 2B. The appellant/plaintiff was a practising Doctor during the relevant point of time. The claim of the appellant/plaintiff was that he was maintaining the suit property by paying taxes and continued to own the same. However, the appellant/plaintiff received a call from the Deputy Superintendent of Police, Thiruvallur, with reference to the complaint given by the respondent against him. Thereafter, the respondent made an attempt to trespass the schedule property and the appellant/plaintiff filed the suit for declaration and permanent injunction. The said contentions were defended by the respondent respondent by stating that the appellant/plaintiff is not at all the owner of the property and the suit is filed in order to wrap the schedule property and thus, the petition is to be dismissed.

4. The trial Court adjudicated the issues and made a finding that the title deed stands in the name of the respondent and the balance of convenience is also in her favour. The appellant/plaintiff has stated that the original title deed was taken by the respondent, when she left the matrimonial home. However, neither of the parties have produced the original title deed before the trial Court. Thus, the custody of the original title deed itself was doubtful. There is no pleading with regard to as to what is the basis of the apprehension of the appellant/plaintiff . There are no averments setting out the manner, in which, the respondent was taking steps to alienate the suit property. The respondent has stated that the original documents are in the custody of the appellant/plaintiff and therefore, there is no possibility for the respondent to sell the property. The property in question is under the possession and usage of both the parties. Under these circumstances, the trial Court found that the appellant/plaintiff has failed to show the balance of convenience and irreparable loss. The trial Court made a categorical finding that neither of the parties have established their ownership. More specifically, appellant/plaintiff has not produced the title documents to

establish his prima facie case. However, the fact remains that both the appellant/plaintiff and the respondent are blaming each other.

5. In view of such circumstances, the trial Court arrived at a conclusion that the apprehension raised by the appellant/plaintiff is baseless and there is no evidence to establish even the title. Thus, no prima facie case was made out by the appellant/plaintiff for the purpose of grant of injunction.

6. This Court is of an opinion that the trial Court has rightly formed an opinion that in the event of not establishing any prima facie case, the person, who has approached the Court for the order of interim injunction, cannot be entertained. The suit is for declaration and permanent injunction. Even the title documents were not produced by either of the parties. This being the factum of the case, this Court does not find any perversity or infirmity with regard to the findings and decision arrived at by the trial Court.

Accordingly, the fair and decretal order dated 24.07.2019 passed in I.A.Nos. 2 & 3 of 2019 in O.S.No.56 of 2019 on the file of the I Additional District Court, Thiruvallur, stands confirmed. As a sequel, these civil miscellaneous appeals are dismissed. No costs. Connected C.M.Ps. are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

NSD

To

The I Additional District Judge, Thiruvallur.

+1cc to Mr.AR.Suresh, Advocate, S.R.No.19555

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GSM(CO)

TE (23/04/2021)