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C.M.P.Nos.1372 & 1373 of 2022

in

C.M.A.No.176 of 2022

P.T.Asha, J.

C.M.P.No.1373 of 2022

C.M.A.No.176 of 2022 is filed challenging the order passed in I.A.No.4 of 2020 in O.S.No.170 of 2020 on the file of the Principal District Judge, Thiruvallur, whereby the learned Judge has dismissed the application filed by the appellants seeking an order of injunction restraining the defendants / respondents from alienating or creating any sort of encumbrance over the scheduled property till the disposal of the suit. The brief facts are as follows:

2. The appellants herein had filed the suit O.S.No.170 of 2020 on the file of the Principal District Court, Thiruvallur, for a declaration of their right, title and interest over the suit schedule property and for a consequential injunction restraining the defendants, their men, agents or any one claiming under them from interfering in any manner with the



plaintiffs' peaceful possession and enjoyment of the suit property and also for an injunction restraining the defendants from alienating or creating any sort of encumbrance over the subject property.

3. The appellants' case was that the suit schedule property, which measures an extent of 3.24 cents in S.No.1492/1 and an extent of 1.56 Acres in S.No.1492/2 belonged to one Birla Chengalvarayan. The said Birla Chengalvarayan died on 09.02.2010 and the 1st appellant is his wife and the appellants 2 to 4 are his children. They are the only legal heirs of the said Birla Chengalvarayan.

4. The plaintiffs / appellants would submit that, prior to that, the properties were possessed by Venkatasamy. After the demise of Venkatasamy, his daughter Akkammal was in possession of the suit property and on her death, her sons, Birla Chengalvarayan, Nagaiya, Krishnan and Balachandran as her legal heirs, were in possession of the suit property. In an earlier partition, the suit properties fell to the shares of Birla Chengalvarayan and patta was also mutated in his name. After his demise, the appellants have been in possession of the property by



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cultivating the same from the Well situated in S.No.1492/2. Apart from the suit properties, the property in S.No.1491/1 situate south of the suit property also belonged to Birla Chegalvarayan.

5. The plaintiffs / appellants would submit that the defendants / respondents who were absolute strangers to the property are trying to interfere with the possession of the property by creating wrong entries in the revenue records. It appears that they have got patta in their favour and on coming to know about the same in the month of December 2017, the 1st plaintiff / 1st appellant had filed an application before the Tahsildar, Thiruvallur Taluk on 23.03.2018 for cancellation of the patta granted to the defendants and issuance of patta in her name. After enquiry, the Tahsildar, Thiruvallur Taluk passed an order cancelling the wrong enteries and issued patta in the name of the 1st appellant. Meanwhile, the extent in S.No.1492/1 was subdivided into 1492/1B and 1C. Likewise, S.No.1492/2 was subdivided as 1492/2A1, 2A2 and 2B.

6. The plaintiffs / appellants would submit that the defendants / respondents thereafter filed an appeal before the Revenue Divisional



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Officer, Thiruvallur, beyond the period of 1 ½ years. The Revenue Divisional Officer, Thiruvallur, without taking into account the delay proceeded to allow the appeal. The Revenue Divisional Officer without appreciating the merits had allowed the appeal, as against which the appeal is pending before the District Revenue Officer, Thiruvallur. Considering the interference by the defendants, the plaintiffs have come forward with the above suit.

7. Along with the suit, two interlocutory applications were moved by the plaintiffs:

(i) **I.A.No.3 of 2020** is filed for the following relief:

“To pass an order of Ad Interim Exparte Injunction restraining the respondent / defendant or his agent from interfering in any manner with the plaintiffs peaceful possession and enjoyment over the scheduled property till the disposal of the suit.”

(ii) **I.A.No.4 of 2020** is filed for the following reliefs:



“To pass an order of Ad Interim Exparte Injunction restraining the respondent / defendant or his agent from alienating or creating any sort of encumbrance over the scheduled property, till the disposal of the suit.”

8. The two Interlocutory applications were considered independently by the learned Principal District Judge, Thiruvallur. Though separate orders were passed they are identical in content.

9. The learned Principal District Judge, Thiruvallur had dismissed the applications stating that no documents have been filed to prove the possession of the property by the plaintiffs / appellants. The learned Judge has stated that though the settlement deed has been filed as Ex.P.1, no documents have been filed to show their continued possession. On the contrary, the defendants / respondents have filed Ex.R.11 to R.26, kist receipts right upto the period of suit as well as beyond and therefore the learned Judge has dismissed the applications. Challenging the same, the appellants are before this Court.

10. Heard the learned counsel for the appellants / petitioners.



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11. I.A.No.4 of 2020 has been filed for an injunction restraining the defendants from alienating the property. The plaintiffs have been able to prima facie show their title to the suit property in the form of settlement deed executed by Venkatasamy in favour of his daughter, Akkammal in the year 1952.

12. Further, the plaintiffs / appellants have proved that patta No.1326 has been obtained by the defendants in the year 2013, as against which the plaintiffs / appellants have filed an application for cancellation of patta before the Tahsildar, Thiruvallur and the Tahsildar, Thiruvallur by order dated 03.07.2018 cancelled the patta issued in favour of the defendants and patta nos.2695 & 2696 were issued in favour of the 1st plaintiff. This order has been challenged by the defendants / respondents before the Revenue Divisional Officer, Thiruvallur, who has set aside the orders of the Tahsildar, Thiruvallur, against which the matter is now pending before the District Revenue Officer, Thiruvallur.



13. A perusal of the documents filed on either side would indicate that there is a serious contest with reference to the title of the property which is now the subject matter of the suit. In these circumstances, if the defendants / respondents are allowed to alienate / encumber the property, it would cause serious prejudice to the plaintiffs / appellants. Therefore, there shall be an order of injunction restraining the defendants / respondents from alienating or creating any sort of encumbrance over the scheduled property until further orders.

14. Notice to the respondents returnable by 25.03.2022.

C.M.P.No.1372 of 2022

15. In the light of the order passed in C.M.A.No.175 of 2022 & C.M.P.No.1373 of 2022 in C.M.A.No.176 of 2022, the present Civil Miscellaneous Petition, namely, C.M.P.No.1372 of 2022 is dismissed.

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