



C.M.A.No.1067 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY JUDGMENT RESERVED ON : 28.04.2023

JUDGMENT PRONOUNCED ON : 07.07.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.1067 of 2023
and C.M.P.NO.10051 OF 2023

C.B.Manokaran

...Appellant

Vs.

1.The Commissiainer,
Corporation of Greater Chennai,
Rippon Buildings,
Park Town, Chennai-600 003.

2.The District Collector,
Chennai District,
Singaravelan Maligai,
First Lane Beach Road,
Chennai-600 001.

3. The Tahsildhar,
Tiruvotriyur Taluk,
Chennai Corporation Building,
1st Floor, Thiruvottiyur High Road,
Tiruvottiyur, Chennai- 600 019
(Opposite Government Hospital)

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under order XLIII Rule 1(r) of



C.M.A.No.1067 of 2023

CPC, praying to set aside the fair and decreetal order dated 24.04.2023 passed by the learned IV Additional District and Sessions Judge, Tiruvallur, at Ponneri.

For Appellant : Mr.B. Hari Krishnan

For R-1 : Mr. A.S. Ragul Adhithya
for Mrs. P.T. Ramadevi

For RR2 and 3 : Mr.C. Jayaprakash

* * * *

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the fair and decreetal order dated 24.04.2023 passed by the learned IV Additional District and Sessions Judge, Tiruvallur, at Ponneri.

2.The above Civil Miscellaneous Appeal is filed by the unsuccessful plaintiff/ petitioner against I.A.No.4 of 2023 in O.S.137 of 2023, whereunder his application for ad interim Injunction under Order 39 Rule 1 and 2 r/w. Section 151 of CPC was dismissed.



C.M.A.No.1067 of 2023

3.The brief facts of the case leading to the above Civil Miscellaneous

Appeal are as follows:

The appellant/petitioner as one of the legal heirs of one Chellammal and claiming to have 1/4th share in the suit properties filed the suit for declaration and other reliefs. According to the appellant, the said Chellammal was his paternal grandmother and she purchased the property in Survey number 73/50 measuring 16,000 sq.ft. situated in Ernavur Village under registered sale deed dated 11.04.1966. The said Chellammal sold the aforesaid property to one T.D.Purushothaman vide Sale Deed dated 06.12.1967. The appellant claims that, apart from the aforesaid property, the said Chellammal had other properties.

4.The appellant's grandmother Chellammal died on 17.03.1983 leaving behind her three sons, one daughter and three grand-children including the appellant herein, as the legal heirs of her pre-deceased son Balasundaram. According to the appellant, on the demise of Chellammal, the legal heirs of Chellammal were entitled to the suit properties and the appellant was entitled to 1/5th share, as one of the the legal heir of pre-



C.M.A.No.1067 of 2023

deceased son of Chellammal. It is the appellant's further case that after demise of the vendee of Chellammal his legal heirs sold the property purchased by him in Survey number 73/50 measuring 16,000 sq.ft at Ernavur Village along with the lands comprised in Survey No.73/IP, 73/49, 73/48, Block No.4, Ward B, situated at Ernavur Village vide Sale Deed dated 10.03.2011. The appellant on coming to know of the fraudulent sale of land filed the suit in O.S.No.4 of 2017, on the file of District Munsif Court, Tiruvottiyur, for declaration that the Sale Deed dated 10.03.2011 was non-est, invalid and not binding on the appellant. In the above suit, on 06.01.2017, a status quo order was passed in I.A.No.21 of 2017, which was filed for interim injunction restraining the respondents therein from interfering with the appellant's personal possession and enjoyment of the suit property. Later the status quo order was not extended. Pending the suit, the appellant also filed an application in I.A.No.2 of 2020 for appointment of Advocate Commissioner to inspect the said properties and to file a report with the help of a Taluk Surveyor. The said I.A was dismissed on 24.11.2020 against which the appellant filed Civil Revision Petition before this Court in C.R.P.No.2321 of 2020 and the same was allowed by this



C.M.A.No.1067 of 2023

Court on 20.04.2021. Pursuant to the order in the CRP, the Advocate

Commissioner inspected the property and filed his report on 20.10.2022.

5. According to the appellant, the Corporation of Chennai illegally constructed Amma Unavagam and Satthunavu Koodam on the said land, and therefore the appellant filed a Writ Petition in W.P.No.8369 of 2018 for a Writ of Mandamus for demolishing the illegal construction put up by the Corporation of Greater Chennai. The said writ petition was dismissed on 10.04.2018 as withdrawn with liberty to the appellant to workout his remedy in accordance with law, before the Competent Authority.

6. According to the appellant, the officials of the Corporation of Chennai entered into the property on 03.09.2022 and started demolishing the water tank and other structures standing thereon. When the appellant enquired with the officials he was told that there was a proposal for construction of Health Centre/Hospital in the said property, for which the



C.M.A.No.1067 of 2023

preliminary work was carried on. The appellant therefore filed the Writ Petition in W.P.No.26125 of 2022 forbearing the respondent from putting up any construction over the said property. An interim order was passed by this Court restraining the Corporation from putting up a construction and the said order was made absolute. At the time of hearing of the case on 25.01.2023, this Court Suo-Motto impleaded the Tahsildhar and directed the Tahsildhar to produce the revenue records and after perusal of the records further directed the Tahsildhar to inspect and file a report. The aforesaid direction of this Court was complied with by the Tahsildhar and a status report dated 24.02.2023 was also filed. This Court after going through the status report dismissed the writ petition with liberty to the appellant to file a civil suit including for recovery of possession, if so advised.

7. Thereafter the appellant filed a suit in O.S.No.137 of 2023 on the file of the IV Additional District Court at Tiruvallur for a declaration of title to the lands in T.S.No.78, Old Survey No.73/1 part, situated in Ward No.4, Block No.78, measuring 00.04.16 Hectres, in Ernavur Village, Thiruvottiur Taluk and also for consequential relief of recovery of possession, after



C.M.A.No.1067 of 2023

removing all the structures put up thereon and further reliefs as prayed for therein.

8. Pending the said suit, the appellant filed an interim application restraining the Corporation of Chennai from putting up construction of any nature on the lands in the petition mentioned property. The respondents contested the suit as well as the interim application by filing a detailed counter.

9. It was the respondent's case that the property originally belonged to Tiruvottiyur Municipality and later on expansion of the Chennai Corporation by including 42 small local bodies, 9 Municipalities, 8 Town Panchayats and 25 Village Panchayats, the Chennai Corporation became the owner of the schedule property. According to the respondent/Corporation, the suit property as per the revenue records of Tiruvottiyur Tahsildhar office comprised in T.S.No. 78, Old Survey number 73/1 Part, situated in Ward No.4, Block No.78 was classified as Circar Poramboke- Gramma Natham, measuring 00.04.16 Hectares, situated in Ernavur Village, Tiruvottriyur



C.M.A.No.1067 of 2023

Taluk.

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10. According to the respondent/Chennai Corporation, on merger of Tiruvottiyur Municipality with the Chennai Corporation, the suit lands measuring 4 ares and 16 sq.mtrs of 4477 sq.ft which was classified as Municipal land belong to it. The Corporation had also constructed Amma Unavagam to an extent of 1,000 sq.ft and an Anganwadi measuring an extent of 1350 sq.ft, out of the said land of 4477 sq.ft. According to the respondent/Corporation, the aforesaid buildings are functioning since 02.04.2013. The Corporation decided to construct the Primary Health Center to an extent of 2127 sq.ft for the use of general public by utilising the funds granted from the Hon'ble Chief Minister of Tamil Nadu Scheme.

11. While the Corporation started construction of the Primary Health Centers the appellant along with rowdy elements tried to prevent the Corporation and their associates from constructing the Primary Health Centers. According to the respondent/Chennai Corporation, the land which the appellant claimed title to was comprised in Survey Number 73/48,



C.M.A.No.1067 of 2023

situated at Ernavur Village, Tiruvottiyur Taluk, whereas the land in question belonging to the Chennai Corporation was comprised in Survey Number 73/1 part in Ernavur Village, Tiruvottiyur Taluk and therefore the land belonging to the Corporation was in no way connected to the appellant's land. The Corporation claimed that the appellant had not made out *prima facie* case and in fact, the balance of convenience was in its favour, because if the work was stalled, irreparable loss would be caused not only to the Corporation but also to the general public.

12.On the aforesaid pleadings the respondent/Corporation sought dismissal of the application.

13.Before the Trial Court no oral evidence was let in by the parties. On the side of the appellants, Ex.P.1 to Ex.P.26 were marked with objections to the marking of Ex.P.1 to Ex.P.5, Ex.P.11, Ex.P.20 and Ex.P.25. On the side of the respondents, Ex.R.1 to Ex.R.3 were marked.

14.The Trial Court on the basis of above evidence and on perusal of



C.M.A.No.1067 of 2023

the counter and the documentary evidence filed by the parties dismissed the application.

15.The Trial Court held that the appellant had failed to file any title documents like settlement deed or any Assignment order passed by the Government in favour of deceased Chellammal to prove the *prima facie* title to the property. The appellant had also failed to prove by filing documentary evidence, his possession of the property. The Court further found that the Ex.P.1 to Ex.P.5 were mere xerox copies and that the appellant had not taken any steps to mutate the revenue records in the name of legal heirs of the deceased Chellammal, when admittedly Chellammal had died in the year 1983 itself. The Court found that the appellant had failed to make out a *prima facie* case and that the balance of convenience was not in favour of the appellant and on such findings the Trial Court dismissed the application.

16.The learned counsel for the appellant took this Court through the entire documents placed on record and vehemently argued that the Trial



C.M.A.No.1067 of 2023

Court had erred in dismissing the application for injunction.

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17. According to the learned counsel for the appellant, the trial court erred in thinking that *prima facie case* meant *prima facie* title. According to the learned counsel, the trial Court by stating that the appellant had not filed any document of title like settlement deed or any assignment order passed by the Government in favour of the deceased Chellammal confused *prima facie case* with *prima facie* title. The learned counsel relied on the Judgment of the Hon'ble Supreme Court in the case of ***Dalpat Kumar and Another Vs. Prahlad Singh and Others*** reported in (1992) 1 SCC 719, in support of the said contention. Though the learned counsel took me through the voluminous document filed by him including the previous litigations, I am of the view that an elaborate discussion of the same is not necessary to decide the present appeal. The learned counsel further submitted that the trial Court had erred in thinking that the balance of convenience was also not in favour of the appellant.

18. The learned counsel for the first respondent on the other hand



C.M.A.No.1067 of 2023

submitted that the trial Court had given cogent and justifiable reasons for rejecting the injunction application and therefore the same did not call for any interference in the appeal. The learned counsel for the first respondent submitted that the appellant had given different Survey Nos. in the schedule of plaint, the I.A. and the schedule to the I.A. The learned counsel therefore submitted that the appellant was not confident of the identity of the property and therefore the petition for injunction in the absence of the boundaries, the linear measurements and the correct survey Nos. of the properties was not maintainable as the property could not be properly identified. The learned counsel for the first respondent referring to the report filed by the Tahsildhar in the writ petition which was filed in the appellant's type set submitted that there was absolutely no connection between the suit Survey number and the property of the respondent corporation. On the aforesaid contentions, the learned counsel submitted that there were absolutely no merits in the appeal and the same deserved to be dismissed.

19.I have heard both the learned counsel and have perused the materials on record.



C.M.A.No.1067 of 2023

WEB COPY

20.The appellant produced Ex.P2 to Ex.P4 in support of his case that the property belonged to his deceased grand mother Chellammal. Ex.P2 to Ex.P4 are the xerox copies of the extract of SLR Register, Chitta and Adangal extract for Fasali 1419 and 1429. In my view the trial Court had rightly rejected the said documents on the ground that they were mere xerox copies and further they stood in the name of Chellammal, who died in 1983. The trial Court found that there was absolutely no explanation on the side of the appellants for not mutating the said documents in the names of the legal heirs from 1983, the year in which the Chellammal died.

21.On perusal of the list of documents filed by the appellant before the lower Court, it is seen that there is absolutely no evidence to establish the possession of the appellant of the suit properties.

22.One important aspect to be noted is the Survey Nos. of the



C.M.A.No.1067 of 2023

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property given in the petition, schedule to the I.A., and the schedule to the
plaint.

23.In the schedule of property given in the plaint the suit
property is referred to as follows:

*“All that piece and parcel of land measuring
4477.408 sq.ft., (416 sq.mtrs) comprised in Survey
73/48, situated in Ernavur Village, Tiruvottiyur
Firka, Tiruvottiyur Taluk, Tiruvallur District, now
Chennai District, situated within the Registration Sub
District of Tiruvottiyur and Registration District of
Chennai North.”*

24.In the schedule of property to the I.A., the schedule is shown as
under:

*“All that piece and parcel of land measuring
4477.408 sq.ft., comprised in Survey 73/48, situated*



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C.M.A.No.1067 of 2023

in Ernavur Village, Tiruvottiyur Firka, Tiruvottriyur Taluk, Tiruvallur District, now Chennai District, situated within the Registration Sub District of Tiruvottiyur and Registration District of Chennai North.”

25.The property for which the injunction was sought for, was referred to in the petition filed under Order XXXIX Rule 1 & 2 r/w Section 151 CPC as follows:

“For the reasons stated in the accompanying affidavit the petitioner herein prays that this Hon'ble Court may be pleased to pass an order of ex-parte ad-interim injunction restraining the respondents/defendants, their officials/men and agents working under them from in any manner putting up construction of any nature on lands comprised in T.S.No.78, Old Survey No.73/1 part situated in Ward No.4, Block No.78, purportedly



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C.M.A.No.1067 of 2023

classified as Circar Poromboke – Gramma Natham, measuring 00.04.16 Hectres, situated in Ernavur Village, Tiruvottiyur Taluk, previously Tiruvallur District, presently Chennai District, morefully described in the Schedule hereunder, pending disposal of the suit.”

26.From the above it is seen that the suit property is comprised in T.S.No.73/48, whereas the injunction is sought for the property comprised in T.S.No.78, Old Survey No.73/1 part.

27.The appellant instituted the suit against the respondents for declaration and recovery of possession and injunction with respect to T.S.No.78, Old Survey No.73/1 part, but in the schedule of property the Survey No. was given as 73/48. It is further pertinent to note that the prayer in the suit is for a declaration of title of the appellant to the property in T.S.No.78, Old Survey No.73/1 Part in Ernavur Villag, Tiruvallur District and for a direction to the respondent to hand over the possession of the said



C.M.A.No.1067 of 2023

property by removing all the structures put up thereon.

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28.It is seen that the relief claimed in the suit is for recovery of possession by removing all structures put up thereon. Therefore there is an admission by the appellant that the property is in possession of the Corporation. In the said Writ Petition, the report was accepted and the appellant was relegated to the Civil Court to establish his title to the property. The appellant has disputed the report, but in my view, the same can be tested only during the trial. When the Corporation has *prima facie* established its right to the property and the possession of the Corporation is also admitted by praying for recovery of possession in the suit, I am of the view that the appellant is not entitled for injunction. The other aspect is on the balance of convenience, I find that the balance of convenience is in favour of the Corporation of Chennai as the Primary Health Centre under construction by it is for the benefit of the general public and funding for the project is from the funds granted from the Hon'ble Chief Minister's Scheme. If the injunction is granted not only would the funds act wasted, but also the beneficial project for the public would be stalled.



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C.M.A.No.1067 of 2023

29.The learned counsel for the appellant referring to the case of ***Dalpat Kumar and Another Vs. Prahlad Singh and others*** reported in ***(1992) 1 SCC 719***, submitted that prima facie case does not mean prima facie title. There is absolutely no dispute on the said proposition.

30.It is further pertinent to note that in the very same Judgment, the Hon'ble Supreme Court held as follows:

“The phrases "prima facie case"; "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice.”

31.Further in the Judgment of the Hon'ble Supreme Court in the case



C.M.A.No.1067 of 2023

of ***Shiv Kumar Chadha Vs. Municipal Corporation of Delhi and Others***

reported in ***(1993) 3 SCC 161***, the Hon'ble Supreme Court held that a party is not entitled to an order of injunction as a matter of right or course. The Hon'ble Supreme Court further held that the grant of injunction is within the discretion of the Court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. It was held that the purpose of injunction is, to maintain the status quo.

32. On the facts of the case as discussed above, it is clear that the T.S.No.78, Old S.No.73/1 part for which the petition for injunction was filed is in the possession of the respondents as admitted by the appellant in the suit, wherein he has prayed for recovery of possession. I find that if the injunction is granted in favour of the appellant, it is not the appellant who will suffer irreparable loss or damage, but it is the respondent and the general public who will be put to irreparable loss. In the light of the Judgments of the Hon'ble Supreme Court and on the facts of the case, I find



C.M.A.No.1067 of 2023

no merits in the appeal and the same is dismissed.

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33.Accordingly, this Civil Miscellaneous Appeal stands dismissed.

There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

07.07.2023

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

dsn/ah

To

- 1.The IV Additional District and Sessions Judge,
Tiruvallur, at Ponneri.
- 2.The Commissiainer,
Corporation of Greater Chennai,
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- 3.The District Collector,
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WEB COPY



C.M.A.No.1067 of 2023

4.The Tahsildhar,
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1st Floor, Thiruvottiyur High Road,
Tiruvottiyur, Chennai- 600 019
(Opposite Government Hospital)

5.The Section Officer,
V.R.Section,
High Court,
Madras.



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C.M.A.No.1067 of 2023

N.MALA.J.,

ah

PRE-DELIVERY JUDGMENT IN

C.M.A.No.1067 of 2023



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C.M.A.No.1067 of 2023

07.07.2023