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C.M.P.No.371 of 2024

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in

S.A.No.14 of 2024

P.T.ASHA, J.,

The petitioner/appellant has taken out this application for an injunction restraining the respondent/respondent from putting up any illegal construction in the property, which is the subject matter of the suit in O.S.No.4 of 2011 on the file of the Sub Court, Nagapattinam.

2. The petitioner has filed a suit for declaration and recovery of possession contending that the respondent had trespassed into the suit property and encroached into the same, despite the objection of the petitioner. The respondent tried to occupy 21 cents of the property, which is enjoyed by the petitioner.

3. The respondent has come forward with a written statement stating that the petitioner has come to the Court seeking relief in respect of the property that does not belong to the petitioner. The



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respondent would submit that he and his predecessors-in-title are in enjoyment of the suit property for several decades. Therefore, he has prescribed title by adverse possession.

4. The Trial Court had dismissed the suit, against which, the petitioner has filed an appeal in A.S.No.4 of 2021, which was also dismissed. Aggrieved by the same, the petitioner is before this Court and filed the above second appeal.

5. The above second appeal has been admitted with the substantial questions of law. The main plank of argument on the side of the petitioner is that the respondent had failed to redeem the mortgage and the petitioner has thereafter, been in possession and enjoyment of the suit property for over so many years. However, the Courts below have answered the issue against the petitioner with reference to the possession and the same has also been confirmed by the Lower Appellate Court. The Lower Appellate Court has reversed the judgment



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of the Trial Court.

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6. The petitioner has come forward with this petition stating that the plaintiff is proceeding to put up construction over the suit schedule property, without obtaining prior planning permission. The petitioner is claiming title to the property on the basis of adverse possession. If the respondent is permitted to put up construction without obtaining the permission of the authorities, it would not only prejudice the petitioner, but, the respondent would also claim the right on the basis of such construction, since the title of the property is still in issue.

7. The respondent who had entered appearance had filed a counter. However, he had not addressed any reply on the statement of the petitioner that he is attempting to put up construction without obtaining necessary approval.



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8. Heard the learned counsel on either side and perused the materials available on record.

9. Both the parties are asserting title to the suit property on the basis of adverse possession. The petitioner is claiming title on the basis of adverse possession on the ground that the mortgage in respect of the suit property was created in favour of the petitioner's father who was put in possession of the property as early as in the year 1932. The mortgagee had not taken any steps to redeem the mortgage for over so many years. After his father, the petitioner continues to be in possession of the same. The respondent, on the other hand, would rely upon the sale deed of the year 1963.

10. The petitioner would submit that the respondent cannot be permitted to put up any construction without any prior approval by the authorities. The respondent have not spelt out in clear terms that they are not rushing to put up construction without obtaining prior approval.



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11. Therefore, in the interests of justice and the balance of convenience being in favour of the petitioner/appellant, this C.M.P. is ordered and there shall be an order of interim injunction restraining the respondent from putting up any construction over the suit schedule property except with the prior permission of the concerned authorities.

Notice.

07.02.2024

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