



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2017
(Reserved on 26.04.2017)

WEB COPY

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (NPD) (MD) No.851 of 2017

and

CMP (MD) No.3779 of 2017

Azhagakonar ... Petitioner/Respondent/Plaintiff
vs.

Andikone ... Respondent/Petitioner/Defendant

Petition filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order dated 03.03.2017 made in I.A.No.315/2016 in O.S.No.24 of 2001 on the file of the Principal District Munsif, Manapparai.

For Petitioner : Mr.Raguvaran Gopalan
For Respondent : Mr.A.Manikandan

ORDER

This revision petition is directed against the order of the learned District Munsif, Manapparai, condoning the delay of 4156 days in filing petition to set aside the ex parte decree passed in O.S.No.24/2001.

2.The case of the revision petitioner is that he and the respondent are joint owners of the Well situated in S.F.No.292/9 of Thadhanur Village, Thottiyapatti Taluk, Manapparai. In the year 1991, he applied for electricity service connection to TNEB got its permission and installed 3 HP motor pump to irrigate his land. While so, the respondent who was drawing water using a Kaver interfered with his exclusive right of drawing water through electrical motor pump, hence he filed O.S.No.24/2001, for permanent injunction. The respondent herein filed his written statement, but remained absent during trial. So, ex parte decree came to be passed on 20.09.2004.

3.After 11 years, the respondent has filed a petition to set aside the ex parte decree along with a petition to condone delay of 4156 days in filing the same. The Trial Court has considered the plea of the respondent herein and allowed the same with cost of Rs.3,500/- which according to the revision petitioner ought not



to have been allowed. Hence, this revision petition challenging the legality of the order condoning the extraordinary delay.

4.The respondent herein contended that till 28.11.2015, the revision petitioner did not disturb him drawing water from the Well using Kaver. On that day, when he approached the revision petitioner to give consent for getting change over facility of service connection of EB, he refused citing the ex parte decree dated 20.09.2004. Hence, the respondent enquired with his counsel and found the suit was decreed ex parte. His right in the well is admitted. He never intended to disturb the right of the revision petitioner in his enjoyment of the service connection and his 3 HP motor pump. His only grievance is citing the ex parte decree, the revision petitioner is refusing to give consent to EB to issue separate change over permission. This has forced him to file petition to set aside the ex parte decree.

5.On hearing both sides, when this Court directed the counsel for the revision petitioner to ascertain whether his client has any objection for issuance of change over permission to the respondent to avail electricity service connection to draw water from the Well in S.F.No.292/9 by installing separate motor pumps at his cost. The learned counsel reversed back after ascertaining from the revision petitioner that the revision petitioner has no objection for such proposal and ready to give no objection to TNEB for separate change over, provided, the respondent makes exclusive arrangements on his own to draw water from the Well.

6.In the light of the above submission made by the revision petitioner, this Court is of the view the right of the respondent in the subject Well can be effectively exercised only if he is allowed to draw water using motor pump instead of Kaver. At the same time, the exclusive right of the revision petitioner in using his 3 HP motor pump already installed for drawing water has to be protected. For the said purpose, no objection from the existing service holder for change over is a pre-requisite. Since the revision petitioner has consented to give no objection for change over, nothing survives in the main suit.

7.In view of the undertaking given by the revision petitioner that he is ready to give no objection to TNEB for separate change over in service connection No.137 in S.F.No.292/9 in favour of the respondent, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/



To

The Principal District Munsif,
Manapparai.

WILDCOPY

Copy to : The Section Officer, V.R Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s. K.PRABHAKAR Advocate in SR. No.54953

+1cc to M/s. A.MANIKANDAN Advocate in SR. No.55451

NBI

JS/MR/SAR.3/17.05.2017/2P-5C

Pre-Delivery order made in
CRP (NPD) (MD) No.851 of 2017
28.04.2017