

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.4570 of 2011 and 2909 of 2015
M.P.Nos.1 and 2 of 2015

1.T.R.Venkataraman (Deceased)
2.V.Lakshmi
3.S.Chitra
4.V.Krish Kumar
5.V.Raghuraman

.. Petitioners in
both C.R.Ps.

Vs.

1.D.Madanagopal
2.G.Girija

.. Respondents in
C.R.P.No.4570/2011

1.D.Madanagopal
2.G.Girija
3.G.Ramesh Kumar
4.Maina Bai
5.R.Dinesh Kumar
6.Varsha Jain

.. Respondents in
C.R.P.No.2909/2015

(RR3 to 6 brought on record vide
Court order dated 06.01.2016 made
in M.P.No.3/2015 in C.R.P.No.2909/2015)

PRAYER in C.R.P.No.4570/2011: Civil Revision Petition filed under
Section 115 of C.P.C against the fair and decretal order dated
09.08.2011 made in I.A.No.948 of 2011 in O.S.No.10282 of 2010
on the file of the IV Additional Judge, City Civil Court, Chennai.

PRAYER in C.R.P.No.2909/2015: Civil Revision Petition filed under
Section 115 of C.P.C against the fair and decretal order dated

07.04.2015 made in I.A.No.9040 of 2014 in O.S.No.10282 of 2010 on the file of the IV Additional Judge, City Civil Court, Chennai.

For Petitioners : Mr.M.Sriram
(in both C.R.Ps)

For R1 & R2 : Mr.S.S.Rajesh
(in both C.R.Ps)

For R3 to R6 : Mr.P.Subba Reddy
(in C.R.P.No.2909/2015) for M/s.Sreniks.Jain

COMMON ORDER

C.R.P.No.4570/2011: This Civil Revision Petition is filed against the fair and decretal order dated 09.08.2011 made in I.A.No.948 of 2011 in O.S.No.10282 of 2010 on the file of the IV Additional Judge, City Civil Court, Chennai.

C.R.P.No.2909/2015: This Civil Revision Petition is filed against the fair and decretal order dated 07.04.2015 made in I.A.No.9040 of 2014 in O.S.No.10282 of 2010 on the file of the IV Additional Judge, City Civil Court, Chennai.

2.The issues involved in both the Civil Revision Petitions are one and the same and therefore, they are disposed of by this common order.

3.The petitioners are the plaintiffs and respondents are the defendants in O.S.No.10282 of 2010 on the file of the IV Additional City Civil Judge, Madras (formerly C.S.No.695 of 2004 on the file of this Court). The petitioners filed the said suit for permanent injunction restraining the respondents from interfering with their peaceful possession and enjoyment of the suit property and mandatory injunction. The second respondent filed I.A.No.948 of 2011 under Order XIV Rule 8 of C.P.C to re-locate the bore well situated on the existing demolished Door No.17 to in front of the Door Nos.13 and 15 at the cost of the second respondent. According to the second respondent, the said bore well is used for taking water for the Door Nos.13 and 15. The Door No.13 in the ground floor belongs to petitioners and Door No.15 in the first floor belongs to the second respondent. Water is pumped to over head tank situated in the upstairs portion of the Door No.15 .Door Nos.14, 16 to 19 are demolished. In view of the same, the bore well situated in the Door No.17 is to be re-located to Door Nos.13 and 15 at the cost of the second respondent for the convenience of the petitioners and respondents.

4.The 5th petitioner on behalf of all the petitioners filed counter affidavit and opposed the said application. According to the

petitioners, the other owners of Door Nos.14, 16 and 19 are unobstructing the existence of bore well at Door No.17. The other Flat owners are not parties to the suit and this application and prayed for dismissal of the application.

5.The learned Judge considering the averments in the affidavit, counter affidavit and materials available on record, allowed the application, holding that the relocation of the bore well at the cost of the second respondent is essential for the utilization of the bore well by both the petitioners and respondents.

6.Against that order dated 09.08.2011 made in I.A.No.948 of 2011 in O.S.No.10282 of 2010 the petitioners have come out with C.R.P.No.4570 of 2011.

7.The respondents filed application I.A.No.9040 of 2014 under Section 151 of C.P.C for permission to fill up the unused/abandoned bore well by sand, clay, bounders, pebbles from bottom to ground level to prevent fatal accident in respect of human life, animals, passer by and the children in that area.

8.The petitioners filed counter affidavit and opposed the said application. The petitioners denied that the said bore well was unused for more than 12 years. On the other hand, the said bore well is used to supply water to residence of Door Nos.6 and 8. The respondents only demolished the above well. This Court has already granted an order of injunction to the respondents from closing the bore well.

9.The learned Judge considering the averments in the affidavit and referring to guidelines of Hon'ble Apex Court, allowed the application on the ground that bore well is in a damaged condition.

10.Against that order dated 07.04.2015 made in I.A.No.9040 of 2014 in O.S.No.10282 of 2010, the petitioners have come out with C.R.P.No.2909 of 2015.

11.In both the Civil Revision Petitions, this Court, by the order dated 09.11.2016, appointed two Advocates as Advocate Commissioners to inspect the bore well in question and to file their report. The Advocate Commissioners inspected the area and bore well and filed their report along with the photographs before this Court. The Advocate Commissioners have stated that there is no

water in the well and the same is in a damaged condition, filled with mud and the said well was covered with knitted iron net in green colour, above which concrete pillars are found.

12. Heard the learned counsel for the petitioners as well as the respondents 1 and 2 in both the Civil Revision Petitions and respondents 3 to 6 in C.R.P.No.2909 of 2015 and perused the materials available on record.

13. From the materials available on record and report of the Advocate Commissioners, it is clear that bore well and well in question is unused and is in a damaged condition. In view of the same, the reasoning of the learned Judge for relocation of the bore well to Door Nos.13 and 15 from Door No.17 at the cost of the second respondent for convenience of both the petitioners and respondents 1 and 2 is valid. The order of the learned Judge permitting the respondents 1 and 2 to close the unused bore well is based on the guidelines of the Hon'ble Apex Court. The report of the Advocate Commissioners shows that bore well and well in question is unused. There is no water in the same and filled with to an extent by mud.

14. In view of the above facts, I hold that there is no irregularity or illegality warranting interference by this Court with the orders of the learned Judge dated 09.08.2011 made in I.A.No.948 of 2011 in O.S.No.10282 of 2010 and order dated 07.04.2015 made in I.A.No.9040 of 2014 in O.S.No.10282 of 2010.

15. Ms. Sumithra and Ms. I. Bobby Portia, the Advocate Commissioners appointed by this Court filed a memo for additional remuneration. The parties are directed to pay a sum of Rs.15,000/- (Rupees Fifteen Thousand Only), each to the Advocate Commissioners by way of additional remuneration, to be shared among the petitioners, respondents 1 and 2 in a group and the respondents 3 to 6 (C.R.P.No.2909 of 2015) in another group. The payment shall be made within a period of three weeks from the date of receipt of a copy of this order.

16. In the result, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed. It is open to the second respondent to relocate the bore well as expeditiously as possible.

07.03.2018

Index :: Yes/No

gsa

V.M.VELUMANI,J.

gsa

To

The IV Additional Judge,
City Civil Court,
Chennai.



C.R.P.(PD)Nos.4570 of 2011 and
2909 of 2015
M.P.Nos.1 and 2 of 2015

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