

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 27.08.2018
JUDGMENT PRONOUNCED ON : 12.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN
Civil Miscellaneous Appeal No.1683 of 2014

A.Gunasekaran

.....Appellant/Petitioner

Vs

1.A.Sundaram

2.V.S.Vijay

.....Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Order 43, Rule 1 (v) of the code of civil Procedure 1908, challenging the order passed in I.A.No. 32 of 2013 in O.S.No. 72 of 2013 dated 30.07.2013 on the file of the Additional District Court, No.4. Bhavani.

For Appellant : Mr. T.Murugamanickam SC
For Zeenath Begam
For Respondents : Mr.K.Goviganesan

J U D G M E N T

Aggrieved over the order dated 30.07.2013 passed in I.A.No.32 of 2013 in O.S.No. 72 of 2013, on the file of the Additional District Court No.4, Bhavani, the appellant, who is the 2nd defendant in O.S.No.72 of 2013, has approached this Court by filing this Civil Miscellaneous Application praying to set aside the same.

2. The appellant herein is the 2nd defendant in the original suit. The respondents in this appeal are the plaintiffs in the above suit. In the Trial Court, the respondents filed a suit for the relief of declaration and consequential injunction for the petition mentioned property.

3. Pending suit the appellant herein filed an interlocutory application in I.A.No.32 of 2013 praying to restrain the respondents from in any way interfering with his right of digging bore-well in the petition mentioned property and thereby irrigating the coconut trees.

The case of the petitioner/appellant herein as projected by him before the Trial Court is as follows:-

4. The first respondent herein is the younger brother of the appellant and the second respondent is the son of the first respondent. The property in dispute is originally belonged to one Appachi Gounder, who is the father of the

petitioner/appellant as well as to the first respondent. It is the further case of the appellant that, his father gifted the entire property to him through the gift deed dated 31.10.2010. subsequent to that, due to ill-treatment and torture given by the first respondent, on 13.01.2012 he cancelled the gift deed dated 31.10.2010 and executed another deed in favour of the first respondent. Subsequently, the very same Appachi Gounder transferred the entire property to the appellant and to his family members. It is also stated that in the portion of the suit property now possessed by the appellant 125 coconut trees are there, but due to the drought, most of the coconut trees have been dried up, so, in order to save the remaining trees, on 13.04.2013, the appellant has attempted to dig the bore-well. But, the first respondent herein has preclude him from doing so with the help of the Police. Further, it is stated, it is necessary to put up the bore-well in the petition mentioned property for saving the remaining coconut trees, for which, he is ready to give undertaking to share 50% of water to the first respondent.

5. Opposing the claim made by the petitioner, the 1st respondent filed a counter affidavit denying all the allegations levelled against him. It is stated therein that due to the harassment given by the appellant herein, the said Appachi Gounder had transferred the entire properties in favour of the appellant herein only in order to wreck vengeance against the first respondent. Further, it is stated that digging up of bore-well is not for the welfare of the coconut trees, but only with an intention to deny the shares belonging to the first respondent. According him, the property, now, the appellant wanted to dig up the bore-well is a common property. Therefore, on this score, it is prayed that if injunction is granted in favour of the petitioner/appellant herein, then such an action of appellant herein would ultimately cause irreparable loss to him.

6. In the trial Court, after appointing the Advocate Commissioner and after perusing the report submitted by him, the learned Additional District Judge, after taking note of the fact that the appellant herein as well as the first respondent herein are the co-owner of the petition mentioned property, refused to grant injunction and ultimately, the learned Judge dismissed the application filed by the appellant herein. Aggrieved by the same, the petitioner/appellant herein is before this Court.

7. From the report dated Nil filed by the Advocate Commissioner along with the sketch submitted by him, it is seen that most of the coconut trees situated in the petition mentioned property have been dried up and those coconut trees are of no use on account water scarcity in the said locality. Besides, it is stated that only after 320 feet from the land, he could able to see the availability of water.

8. In the trial Court, the appellant had filed I.A.No.32 of 2013 praying for temporary injunction restraining the respondents from interfering with the right of the petitioner in digging up of the bore-well in the petition mentioned property. It is settled law that while seeking for temporary injunction, person aggrieved has to make out a prima-facie case for seeking such relief and whether it would ultimately cause irreparable injury to him if no temporary injunction is granted. In this regard, it is more appropriate to refer the judgment of this Court reported in 2000 MLJ 213, in which, it is observed as follows:-

"The cardinal principles for grant of ad interim injunction are as follows: (1) Whether the persons seeking temporary injunction have made out a prima facie case. This is sine qua non. (ii) whether the balance of convenience is in their favour, that is, whether it would cause greater inconvenience to them if the injunction is not granted than the inconvenience which the other party seeking injunction could be adequately compensated by the awarding damages and the defendant would be in a financial position to pay them and (iii) whether the person seeking temporary injunction would suffer irreparable injury. It is, however, not necessary that all the three conditions must obtain, with the first condition as sine qua non at least two conditions should be satisfied by the petitioners conjunctively and a mere proof of one of the three conditions does not entitle the person to obtain temporary injunction. "

9. Following the above said principles, in this case, the trial Court has clearly come to the conclusion that the petitioner, being the co-owner of the property, is not entitled for the relief as sought for by him. Admittedly, both the petitioner and the respondent have admitted that the petitioner mentioned property is a common property which was an ancestral property.

10. Moreover, in order to decide the title, the first respondent has filed a suit for the relief of declaration and injunction. In such circumstances, even assuming that the petitioner / appellant herein is having prima facie case for digging up the bore-well, if such prayer is granted at this point of time, then this would cause prejudice to the respondents more than the appellant herein, since, as could be seen from the report submitted by the Advocate Commissioner in

the trial Court, most of coconuts have been dried up, therefore, the very purpose of seeking a prayer to dig up the bore-well only to safeguard the coconut trees is of no use. Hence, on this count, I am of the considered view that there is no necessity at this point of time to dig up the bore-well for the appellant herein.

11. Thus, considering the aforesaid facts and circumstances of the case, I am of the considered view that the decision rendered by the trial Court holds good and therefore, the same is hereby confirmed. Consequently, this Civil Miscellaneous Application is dismissed. There shall be no order as to costs. The connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sbn

To,

1.The 4th Additional District Judge,
Additional District Court No.4,
Bhavani.

Copy to,

VR Section,
High Court,
Madras. (+2 Copies)

+1cc to M/s.Zeenath Begum, Advocate, S.R.No.77097

C.M.A. No.1683 of 2014

BR(CO)

rrs 03/12/2018

WEB COPY