

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2019

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CMA. No.1843 of 2019
and
C.M.P.No.6130 of 2019

M.Ponmanickam

... Appellant/3rd Respondent/3rd Defendant

Vs.

1.M.Gayathri

.... 1st Respondent/Petitioner/Plaintiff

2.M.Vijayalakshmi

3.M.Giriya

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 of the C.P.C. to set aside the fair and decreetal order dated 11.01.2019 in I.A.No.12757 of 2018 in O.S.No.5327 of 2018 on the file of the XV Additional City Civil Court at Chennai.

For Appellant : Mr.T.Saikrishnan

For Respondents : Mr.K.Gunasekar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed seeking to set aside the fair and decreetal order dated 11.01.2019 in I.A.No.12757 of 2018 in O.S.No.5327 of 2018 on the file of the XV Additional City Civil Court at Chennai.

2. Against the grant of interim injunction restraining the petitioner in digging the bore well, the present Civil Miscellaneous Appeal came to be filed.

3. The petitioner and the respondents are brother and sisters. They filed a suit for partition. Pending suit, the first respondent filed a petition for injunction restraining the petitioner from digging the bore well in a common passage. After considering the case, the learned XV Additional Judge, Chennai

has granted an interim injunction as the properties were not divided among the co-sharers by metes and bounds. Aggrieved over the same, the petitioner is before this Court.

4. When the matter is taken up for hearing today, the learned counsel for the petitioner would submit that the petitioner is living in a portion of the house without any water connection and his family members are also suffering for want of water. Therefore, he sought to vacate the order of interim injunction and to permit him to dig a bore well.

5. The learned counsel for the respondent would vehemently oppose that digging of bore well in the common passage, which according to the respondents will cause severe hardship and hindrance to the co-sharers. The petitioner with an intention to harass the co-sharers, indulging in such activities. The petitioner can get a metro water connection from the local body. But he resorted to dig a bore well in the middle of the passage. Therefore, he sought for dismissal of this appeal.

6. The petitioner has filed an affidavit of undertaking before this Court that he digs the bore well only for the purpose of taking drinking water and that he will not dig the bore well affecting ingress and egress of inhabitants and that he will not disturb the peaceful enjoyment of the property by the respondents/plaintiffs. He also undertook to provide water to his sisters from the borewell.

7. Both parties appeared before the Court in person and expressed their difficulties.

8. Admittedly, the common passage has a breadth of 5 feet. Digging bore well in the common passage would certainly cause ingress and egress in the usage of the same.

9. Considering the submissions made by both sides, this Court issue the following directions:

(i) The petitioner shall try to get a metro water from the local body within a period of one week.

(ii) If the metro water connection is not given within that period, he is permitted to dig a bore well at the margin of common passage without affecting the drainage line, the ingress and egress of co-sharers and already existing. If there is any damage caused to the drainage line, the petitioner shall repair the same at his own costs.

(iii) The petitioner shall provide water to his sisters from the bore well dug by him.

(iv) The petitioner shall not claim any equity or cause any disturbance to the respondents in any manner till the disposal of the suit.

10. With the above directions, the Civil Miscellaneous Appeal is Allowed. The interim injunction granted by the trial Court dated 11.01.2018 in I.A.No.12757 of 2018 in O.S.No.5327 of 2018 on the file of XV Additional City Civil Court, Chennai stands modified to the above effect. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Judge,
XV Additional City Civil Court,
Chennai.

+1cc to Mr.T.Saikrishnan, Advocate sr.38772

CMA. No.1843 of 2019
and
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