

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.02.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.2252 of 2018
and
CMP.No.17231 of 2018
and
and CMP.3672 of 2019

V.Muthukumarasamy

.. Petitioner

-vs-

1. Assaram Fathima Marie @
Mandjoudevi Clairan
2. Viveganandane
3. Clairon Jacqueline
4. Suresh Philippe Marie Fancios Clairon
5. Nathalie Jayanthie Mari Anne Clairon

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Order XLIII Rule 1(r) of CPC against the fair and decreetal order dated 31.7.2018 passed in I.A.No.392 of 2016 in O.S.No.88 of 2016, on the file of the III Additional District Judge at Puducherry.

For Appellant : Mr.Subbiah, Senior Counsel
For Elizabeth Ravi

For Respondents : Mr.K.P.Manoharan, Senior counsel
for Mr.K.P.Jotheeswaran

JUDGMENT

The present Civil Miscellaneous Appeal has been preferred challenging the order passed by the III Additional District Judge at Puducherry dismissing the prayer for grant of interim injunction against the 2nd respondent restraining him from interfering with the 1st floor and the terrace over the 1st floor of the house in the schedule of property and 4/6th portion on the ground floor of the house until the disposal of the suit.

2. The brief facts of the case are as follows;

(i) The plaintiff is the appellant before this court.

(ii) The plaintiff filed a suit in O.S.No.88 of 2016 for partition against the respondents herein claiming 4/6th share on the ground floor of the house and vacant area of the plaintiff schedule property for his separate possession and enjoyment after measuring it by metes and bounds.

(iii) Along with the plaint, the appellant herein filed a petition for interim injunction in I.A.No.392 of 2016 praying for grant of ex parte interim injunction against the 2nd respondent/defendant, restraining him from interfering with the 1st floor and the terrace over the 1st floor of the house and 4/6th portion on the ground floor of the house until the disposal of the suit.

(iv) The said I.A.No.392 of 2016 claiming 4/6th share is resisted by the respondents/defendants contending that the plaintiff is entitled to only 3/6th share and that there cannot be any injunction restraining the co-owners from enjoying the common area.

(v) The Court below, dismissed the said application by observing that the entitlement of shares and the right over the property cannot be determined without evidence and the appellants having admitted that they are the co-owners of the property, cannot claim exclusive right. Since balance of convenience requires enjoyment of common area by both the parties, the court below dismissed the petition for injunction.

3. Learned Senior counsel appearing for the appellant would submit that it is not in dispute that he has put up a structure to an extent of 200 sq.ft., on the second floor, to which the respondents have no right and they cannot disturb his possession over the same. He would further contend that the appellant was given an exclusive right to build 200 sq.ft in the first floor and having put up a structure to the extent of 200 sq.ft., at the second floor, he can claim exclusive right over the second floor.

4. Learned Senior counsel appearing for the respondent would contend that there is a separate stair case leading from ground floor to first floor and from first floor to open terrace and it is a common facility available to both the parties. In a property where there is no division by metes and bounds between the co-owners, common amenities such as under ground water and drainage sumps, overhead tanks, water pipes, drainage pipes, open area and common terrace belongs to both of them as is being

the practice in apartments. The very prayer sought for in the suit itself is for 4/6th share in the undivided property. Therefore, the trial Court has rightly dismissed the relief sought by the appellant/plaintiff for grant of injunction for his exclusive right over the 2nd floor portion.

5. It is admitted by both parties that they use a common sump for water storage in the ground floor with motor and pipelines leading to first floor and second floor portions. There is a stair case running from the ground floor to first floor portion and from first floor to second floor. It is further seen that there exists two overhead tanks at the open terrace, supplying water to first floor and ground floor portions.

6. When the undivided shares were sold, the appellant was given a right to put up construction to an extent of 2000 square feet on the first floor portion. But the fact remains that both parties have only undivided share over the land and building and the extent of shares as to whether 3/6 or 4/6th share is the subject matter of the suit. Till the right of parties are crystalized identifying the exclusive rights, it leads to an irresistible conclusion that the amenities are to be enjoyed in common. In such a view of the matter, the water storage sumps, drainage, motor, stair case, over head tanks and open terrace shall be treated as common amenities and both the parties are entitled to have access to the same. Since it is admitted by the parties that appellant has put up a structure in the open terrace measuring 200 sq.ft., balance of convenience requires to maintain 'status quo' of the said construction. The respondents are entitled to use the common amenities, without detriment to the possession and enjoyment of the appellant in respect of 200 sq.ft. construction at open terrace.

7. In the circumstances, the following directions are issued to both sides.

1. the appellant/plaintiff shall not resist or prevent the access of the respondents to the open terrace through the staircase as well as usage and maintenance of overhead tanks and enjoyment of amenities common to both parties.
2. The respondents shall not cause any disturbance to the appellant/plaintiff from using the sump or motor available in the ground floor portion and usage of the staircase leading to first floor portion of the appellant.
3. The appellant shall not alter, expand, modify or convert the 200 sq.ft. structure, whether it is permanent or temporary structure, till the rights are determined by the trial court and till the

disposal of the suit. The status-quo of the 200 sq.ft. structure shall be maintained and respondents shall not disturb the possession of the appellant.

4. The parties are entitled to enjoy the common amenities till their rights crystallised by the trial court .
5. The trial court is directed to dispose of the suit as expeditiously as possible. The parties shall not create any third party rights or cause any interference by any third parties till the disposal of the suit.

8. The Civil Miscellaneous Appeal is disposed of with the above directions. No costs. Consequently, connected C.M.P.No.17231 of 2018 and C.M.P.No.3672 of 2019 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The III Additional District Judge,
Puducherry.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to M/s.K.P.Jotheeswaran, Advocate, SR.NO.17557.

+1cc to M/s.Elizabeth Ravi, Advocate, SR.No.17195
(dt:07/03/2019)

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C.M.A.No.2252 of 2018
and
CMP.No.17231 of 2018
and
and CMP.3672 of 2019

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