

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.09.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.Nos.1649, 4409 & 4410 of 2019

in

C.S.No.71 of 2017

1.S.J.Karthikeyan

2.K.Shoundharya

3.K.Raghavendran

... Applicants

S.J.Kumaresh

... Respondents

Prayer in A.No.1649 of 2019: Judges summons filed under Order XIV Rule 8 of the Original Side Rules read with Section 151 of the CPC to direct the respondent herein, to restore water supply to applicants' residence, situated at first floor of the suit property, bearing Old Door No.6, New Door No.9, Appu Mudali Street, Mylapore Chennai 600004, comprised in R.S.No.2601 / 43, Mylapore Division, Mylapore Taluk, Chennai more fully described in the schedule hereunder, within a time frame fixed by this Hon'ble Court.

Prayer in A.No.4409 of 2019: Judges summons filed under Order XIV Rule 8 of the Original Side Rules read with Order XXVI Rule 9 & Section 151 of the CPC to appoint an Advocate Commissioner, directing him / her to inspect the borewell, motor shed and access to over head tanks in the suit property, bearing old Door No.6, New Door No.9, Appu Mudali Street, Mylapore, Chennai – 600004, comprised in R.S.Nos.2601/43, Mylapore Division, Mylapore Taluk, Chennai, more fully described in Schedule A property.

Prayer in A.No.4410 of 2019: Judges summons filed under Order XIV Rule 8 of the Original Side Rules read with Section 151 of the CPC to deposit the original document of the suit property bearing old door No.6, New No.9, Appu Mudali Street, Mylapore, Chennai 600 004, comprised in R.S.No.2601 of 43, Mylapore Division, Mylapore Taluk, Chennai.

For Applicants : Mr.Murali Adikesavan
For Ms.Annamma
For Respondent : Mr.G.RM.Palaniappan

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COMMON ORDER

The above applications have been taken out by the plaintiffs in a suit filed by them for a partition and separate possession of a suit schedule property which is a land measuring an extent of 4676 Sq.ft. together with a

building thereon bearing old Door No.6 (part), new Door No.9 (part), Appu Mudali Street, Mylapore, Chennai 600004, comprised in R.S.No. 2601 / 43 of Mylapore Village. This property has been described in the A - Schedule property to the plaint.

2. The plaintiffs sought for rendition of accounts from October 2013 till the date of delivery of possession of the plaintiffs' $\frac{3}{4}$ th share. The plaint proceeds on the following facts.

3. The plaintiffs would contend that the suit A- Schedule property belonged to one R.S.S.Mani Iyer @ R.S.Subramanian @ Mani Swamigal who had purchased the said property under a registered sale deed dated 13.03.1974. The said Mani Iyer is the paternal grand father of the 1st plaintiff and the defendant. The plaintiffs' contention is that the said Mani Iyer demolished the existing structure and had constructed two buildings on the said land and in one part of the property there is a temple. The plaintiffs would contend that they are living in the first floor. This is the building in the southern side of the property. On the northern side of the A – Schedule property there is another building with two floors. Each floor in the said building consists of two residential portions.

4. The defendant, according to the plaintiffs, is residing in one of the portion in the ground floor of this building and other three portions are let out to the tenants. The said Mani Iyer had only one son S.Janakiraman, the father of the 1st plaintiff and the defendant. Apart from the 1st plaintiff and the defendant the said S.Janakiraman had a daughter, Abirami, who had been given in marriage in the year 1988 and is presently settled in Puducherry. The 2nd and 3rd plaintiffs are children of the 1st plaintiff who are twins. The mother of the 1st plaintiff and the defendant had died in November 1998 and Mani Iyer died two year thereafter on 26.05.2000.

5. The son of Mani Iyer, S.Janakiraman, died on 01.08.2013. According to the plaintiffs, the A- Schedule property remains undivided and has been treated as Coparcenary property belonging to Hindu undivided property which originally consisted of Mani Iyer, his son S.Janakiraman, and the 1st plaintiff and the defendant and also the great grand children of Mani Iyer, namely, the plaintiffs 2 and 3. According to the 1st plaintiff, he being the eldest is the Kartha of the Hindu undivided family. He would further submit that the A-Schedule property belonged to the Hindu Undivided family.

6. As regards the property comprised in R.S.No.2601/29, the 1st plaintiff would contend that it belongs to him he having purchased the same under a sale deed dated 13.03.1974 from one Balakrishna Davey. Ever since from the date of purchase, the 1st plaintiff has been in exclusive possession and enjoyment of the said property. This property shall hereinafter after be referred to as the 1st plaintiff's property. The 1st plaintiff's property and the A – Schedule property are adjacent to each other. The 1st plaintiff's property is in the front of the A – Schedule property (Western side) and abutting Appu Mudali Street. The suit A – Schedule property is the absolute property of the 1st plaintiff. The property on the eastern side of the 1st plaintiff's property is the B - Schedule property.

7. In the month of November 2013, the defendant had approached the 1st plaintiff and requested him to execute a release deed regarding the A – Schedule property for the purpose of improving his credit worthiness as he intended to commence business there. The A – Schedule property being a coparcenary property, release deed could not be executed. However, on the persistence of the defendant the same had been executed. It was however agreed that the release deed would only be a sham and nominal

document and would not be acted upon. However, after the execution of the release deed the defendant changed colours and threatened to evict the 1st plaintiff's family from the 1st floor of the A – Schedule property .

8. It is only then that the 1st plaintiff's wife came to know about the execution of the release deed. Thereafter, she applied for and obtained a copy of the release deed and on perusing the same they came to understand that in the release deed the defendant had mentioned that the property was a joint family property consisting of the 1st plaintiff, the defendant and their sister, whereas the property in question is a coparcenary property.

9. Suffice it to state that this was a trigger for the disputes between the parties and this led to the 1st plaintiff filing C.S.No.938 of 2016 before this Court for cancelling the release deed dated 13.11.2013 and for an injunction restraining the 1st defendant therein who is the defendant herein from dealing with the suit properties in any manner and interfering with the possession and enjoyment of the same by the 1st plaintiff and his family. After the said suit has been filed, the plaintiffs have come forward with the instant suit for the reliefs stated therein.

10. Pending the above suit the applicants have taken out the following applications:

I. A.No.1649 of 2019:

To direct the respondent herein, to restore water supply to applicants' residence, situated at first floor of the suit property, bearing Old Door No.6, New Door No.9, Appu Mudali Street, Mylapore Chennai 600004, comprised in R.S.No.2601 / 43, Mylapore Division, Mylapore Taluk, Chennai more fully described in the schedule within a time frame fixed by this Hon'ble Court.

II. A.No.4409 of 2019:

To appoint an Advocate Commissioner, directing him / her to inspect the suit property bearing old Door No.6, New Door No.9, Appu Mudali Street, Mylapore, Chennai — 600004, comprised in R.S.Nos.2601/43, morefully described in Schedule A property.

III. A.No.4410 of 2019:

To direct the respondent to deposit the original parent document of the suit property bearing old door No.6, New No.9, Appu Mudali Street,

Mylapore, Chennai 600 004, comprised in R.S.No.2601 of 43, Mylapore

Division, Mylapore Taluk, Chennai.

11. It is also to be mentioned that the respondent had taken out an application for rejecting the plaint. However, this Court by order dated 02.12.2019 dismissed the application with an observation that an issue of bar under Order II Rule 2 of the Code of Civil Procedure could be framed as an issue in the suit.

Submissions:

12. A.No.1649 of 2019: This application seeking restoration of water supply to the 1st floor of the suit schedule property has been filed by the applicants stating that since no injunction was granted in the suit the defendant has been troubling the plaintiffs at every juncture. The suit property contained two bore-wells and both bore-wells are in the North-East corner of the suit property having separate motor rooms. However, the key of the motor rooms are with the respondent. The suit property has two Over Head Tanks and each tank is connected to one of the bore well. One water tank is connected to the applicants' portion and the other is connected to the respondent's portion.

13. The applicants would submit that the respondent has removed the electrical unit including the main switch from the motor room which is connected to the over head tank to the applicants' residence under his control and since the respondent is not switching on motor the applicants are left without the water. Hence, the applicants have come forward with the said applications.

14. The respondent would submit that it is he and his family who had been subject to harassment by the applicants. He would submit that the suit property is not a coparcenary property as it was allotted to him by a Will of his paternal grand father and thereafter this right was recognised by a release deed dated executed by the 1st applicant and his sister. The respondent would submit that there has been no question of he having stopped the water supply to the 1st floor. The motor room is never under lock and key and is always kept open. Therefore, there is no question of disconnection of water supply and the entire allegations are false.

15. A.No.4409 of 2019 - (For appointment of an Advocate Commissioner)

The genesis for all the applications are by and large the same except

for few additional statements being made in this application. The applicants would submit that the appointment of Advocate Commissioner was necessary to inspect whether the bore well has been usurped by the respondent, whether the respondent has locked the premises and whether the over head tank is covered in the affidavit filed in respect of the applications. The applicants would also submit that they have CCTV footages to show illegal act of the respondent.

16. The respondent has filed a counter inter alia contending that there is no question of appointing an Advocate Commissioner since the suit in question is a partition suit and further none of the allegations made by the applicants' with reference to the disconnection of the water supply, locking of the motor room had taken place.

17. **A.No.4410 of 2019:** This application has been filed for depositing the original parent documents of the suit property. The only reasons which has been given by the applicants for the deposit of the original documents makes a very interesting reading and the same is extracted herein below:

“14. I submit that the defendant after leaving his

premises has also engaged one servant maid by name Mallika who enters the absolute property via my absolute property and she is bringing some third parties along with her. This lady Mallika is a local real estate broker who carries information about disputed premises to brokers and also tries to let out such properties. She also comes into the house with some bags which she leaves in the locked premises before the Defendant's house. This servant maid Mallika who is the defendant's servant maid entering the premises when the defendant is not around is actually trespassing into our premises when we are the only people around and that too With third parties and with some hidden bags is not only posing a security threat but also gives me apprehension that the Defendant is trying to use this Mallika to eliminate us and to sell off the property. This said Servant Mailika has no business to enter the coparcenary property and passing through my absolute property and her soliciting her broker friends and Who has knowledge of all the inside facts should not be allowed to enter the premises when her Master is not around. The conduct of the Said

Mallika is so much so that any third person unaware of the family background would treat her to be one of the family members. This said authority of Mallika has been granted to her by the Defendant. I am also moving a police complaint against this Mallika for trespassing into my Premises when she has no business in this place to do when the defendant who has hired her is not around.

15. I am sure from the conduct of the defendant, the conduct of his servant maid Mallika and the conduct of his in laws who have visited the premises during his absence and the recent happenings through the anonymous phone calls, that the defendant who has left the place is trying to make quick money using the parent document of the multi crore property in his custody. No prejudice will happen to the defendant as the parent document would be safe in the custody of this Hon'ble court. Hence I pray to this Honourable Court to direct the Defendant to deposit the original parent document of my grandfather's property bearing document number 431 of 1974 bearing survey

number 2601/43 in this Honourable Court till the current suit is disposed off.”

18. The counter to this application is that no grounds have been made for the deposit of the title deeds.

19. The only arguments which has been adduced on the side of the applicants is that the release deed has been fraudulently created by the respondent and the applicants are suffering at the hands of the respondent and that the appointment of the Advocate Commissioner would enable the Court to have a look at the ground reality. That apart, it would not cause any prejudice to the respondent, but for the above arguments no further arguments adduced by the learned counsel appearing for the applicants.

20. Per contra Mr.G.R.Pandian, learned counsel appearing for the defendant / respondent would contend that the suit is nothing but an abuse of process of Court and an attempt to harass the respondent. Admittedly, the property in question belongs to the respondent by reason of not only the release deed but also the Will of their paternal grand father. He would also argue that the release deed was only a sequel to the Will and in

recognition of the bequest made by the grandfather.

21. The learned counsel would contend that there has been no disturbance to the water supply to the portion which has been illegally occupied by the applicants. The learned counsel would further submit that the police who visited the premises after the complaint lodged by the applicants had noted down the fact that there was no substance in the complaint lodged by the applicants. He would submit that there is absolutely no valid reasons given for allowing these applications.

Discussion:

22. Heard the learned counsels and perused the plaint, documents, affidavits, counters, re-joinder, etc.,

23. The genesis as pleaded by the applicants for filing the above applications is that the water supply to the portion in their occupation has been disconnected by the respondent by shifting the switch and locking the mother room access. In order to ascertain the above, the applicants seek to have Advocate Commissioner appointed and also prays for the restoration of the water supply. In the application filed for appointing the Advocate

Commissioner the applicants would submit that the entire episode of the respondent changing the power lines, etc., has been captured on the CCTV camera. That being so there is no necessity to have an Advocate Commissioner appointed.

24. Further, nowhere in the plaint has the applicants contended that they are in occupation of the A -Schedule property. From a reading of this portion of the plaint it appears that the applicants are living in the 1st floor of the building which is on the southern side of the A schedule property which means that the applicants are not in occupation of the A – Schedule property as contended by them in the applications. The said portion of the plaint is extracted herein below:

“5. The land in Schedule 'A' property herein, along with a tile-roofed building thereon was purchased by Sri.R.S.S.Mani Iyer @ R.S.Subramaniam @ Mani Swamigal , the paternal grandfather of First Plaintiff and Defendant, from L.Balakrishna Davey, vide Sale Deed dated 13.3.1974, registered as Document No.431 of 1974 in the Office of Sub-Registrar, Mylapore. Later the said R.S.S.Mani Iyer, demolished the then existing building and constructed two

new buildings on the said land. In the building lying on the southern side in the Schedule 'A' Property herein, the Hindu Undivided Family's Temple is functioning in ground and the Plaintiffs are living in first floor. Idols of Arulmighu Lakshmi and Narayanan; Arulmighu Shiva and Parvathy, Arulmighu Ganapathy and Arulmighu Iyyappan are installed in the said Family Temple. An Idol of Arulmighu Hanuman is installed in Second Floor of the said building. The other building lying on the northern side in Schedule 'A' Property, has two floors. Each floor of the said building has two residential portions. The Defendant is residing with his wife in one Portion in ground floor of the said building. Other three portions in the Said building have been let out to Tenants".

25. Further the applicants have not shown any proof, though they claim that the entire episode has been captured on the CCTV camera especially when the respondent has categorically denied the statement. Since the applicants have already in possession of the necessary evidence there is no necessity for the appointment of an Advocate Commissioner to

note down the details as listed in the applications. In the light of the denial by the applicants and considering the statement of applicants in paragraph No.5 of the plaint, this Court does not find any merits in applications in A.Nos.1649 & 4409 of 2019. Therefore, the above applications are dismissed.

26. As regards the application in A.No.4410 of 2019 for deposit of the original parent documents the reason given which is extracted in paragraph no.17 supra, is absurd. The application lack merits and is therefore dismissed.

27. In the result the applications are dismissed.

Sd/- P.T.A.J
04.09.2020

//Certified to be a true copy//

Dated this the day of 2020
jj 21/09/2020 COURT OFFICER(O.S.)

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