

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 16.10.2020]

[ORDERS PRONOUNCED ON : 03.11.2020]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP (PD).No.1910 of 2020

and

C.M.P.Nos.11703, 11706,11710 and 11712 of 2020

B.Geetha

... Petitioner

.. Vs ..

1.Mrs.S.Renuka

2.Mrs.V.Santhakumari

... Respondents

PRAYER: Petition filed under Section 227 of Constitution of India, praying to set aside the order dated 10.02.2020 passed by the Hon'ble I Additional City Civil Court, Chennai in C.M.A.No.52 of 2020 confirmed the R.A.No.2216/18 in O.S.No.868 of 2018 dated 17.10.2019 on the file of the VIII Assistant City Civil Court, Chennai.

For Petitioner

: Ms.S.Sai Vishaal

For Rajeni Ramadass

For Respondents

: Mr.Christopher Vijayachandran

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JUDGMENT

The petitioner is the Revision Petitioner herein.

2. The petitioner/plaintiff filed O.S.No.868/2018 before the City Civil Court, Chennai for the Permanent Injunction restraining the first defendant from interfering with the peaceful possession of the 'D' schedule property to the plaintiff.

3. Pending suit file I.A.No.2216/2018 for an injunction not to encroach upon the common area and also filed the Advocate Commissioner petition along with the injunction to inspect the cite and for difficult feature as on ground.

4. Initially there was an interim injunction in faovur of the petitioner.

5. Counter filed.

6. During the enquiry on behalf of the petitioner oral evidence has been adduced on behalf of the petitioner. Exhibits P1 to P9 were marked. On behalf of the respondent side R1 to R9 were marked and Court Exhibits C1 to C3 were marked. [C1-Advocate Report C2-Engineer's Report C3-Photographs (4 in no)].

7. By an order dated 17.10.2019, the Injunction Application was dismissed and hence, the petitioner/plaintiff filed C.M.A 52/09. After contest, the C.M.A was dismissed hence, the Civil Revision Petition.

8. The first respondent entered as a Caveator.

9. By consent of both the parties, C.R.P itself is taken up.

10. The learned counsel for the petitioner has submitted that the petitioner/plaintiff has made out a prima facie case in respect of 'B' schedule property which is a common path way wherein the first respondent herein has put up beam obstructing common pathway, thereby violated the clause in the partition deed that the 'B' schedule of property is to be maintained as a common pathway and also referred to the Engineer's Report as well as the photographs enclosed with the report.

11. Per contra, the learned counsel for the respondent could contend that it is the petitioner/plaintiff who had encroached upon the common area/common path way ('D' schedule property in the partition deed and a plaint as well).

12. To draw my attention to the sketch filed by the Engineer's

Report to show that the plaintiff has constructed a wall obstructing the common pathway leading to Jeyachandran lane and he also put up a wooden gate preventing the brother from enjoying the common pathway from Perumal Koil Street. Further stated that a beam was put up while had demolishing and reconstruction of the portion allotted to the first respondent herein and beam is fixed well within 18 feet allotted under the partition deed and invited my attention to the Engineer's Report to show that the beam situated at the 17 feet.

13. After hearing the rival submissions and also perusing the documentary evidence it is seen that the application is filed for interim injunction in respect of the petitioner property.

14. The property bearing Old No.11, New No.19, Perumal Koil Street, Mettupalayam, West Mambalam, Chennai 33 comprised in T.S.No.28, Block No.90 of Kodambakkam Village of an extent of 2395 sq.ft is running East to West and is bounded on the North by Perumal Koil Street and on the South by Jeyachandran Lane. The 4 feet wide X 110.5 feet long common passage referred to in the partition Deed dated 22.02.2006 runs all the way across the property from Perumal Koil Street to Jeyachandran Lane and the same is to be used

commonly and undividedly by the three owners, namely the petitioner and the respondents. It has been categorically stipulated in the said Partition Deed dated 22.02.2006 that the parties have no right to cause any obstruction or hindrance in the common passage.

15. According to the petitioner the beam now put up trying to put up by the respondents falls on the common passage of 4 feet.

16. The contention of the respondent is that the petitioner is using that part of the common passage in front of her portion of the property to her use exclusively denying the use of the same by the respondents who are also entitled to use the same. The petitioner has not come to this Hon'ble Court with clean hands. The petitioner has misled this Hon'ble Court got an interim injunction by playing fraud and suppressing the fact that the petitioner has obstructed the common passage by erecting a wooden wicket gate and a wall thereby preventing the respondents from using the same. The petitioner has also suppressed the fact that the petitioner is using that portion of the common passage in front of her portion of the property exclusively. The petitioner has not produced any iota of evidence to show that indulged in digging up the common passage or caused any obstruction

in the same.

17. Heard and perused the records.

18. On careful perusal of commissioner's report Exhibits C1 to C3, the commissioner stated that the 'C' schedule property on which a building exists with AC sheet roof and an attached bathroom. Towards their rear side of this building there exists a door which opens out into Jayachandran lane and schedule D common pathway on the Eastern side of the suit property which extends perpendicularly from Perumal Koil street on the Northern side to Jayachandran Land on the Southern side A-wicket gate is put up at the juncture where schedule B property ends and schedule C property begins. The wall bordering the common pathway is disjointed and broken halfway through along side schedule A and B properties but is raised and fully intact when along side the pathway bordering schedule C property. Therefore it is clear that the petitioner has blocked the common pathway by erecting the wooden gate at the beginning of her portion and also put up a door at the end of common pathway.

19. On perusal of the Ex.P1 Partition Deed, as well as the suit

property mentioned by the first respondent, it is seen that with respect to the suit schedule B property of the first respondent, it is specifically mentioned as the northern side 18 feet, southern side 18 feet. Thus, it is evident that as per the Ex.P1 partition deed and even as per the contention of the appellant, the first respondent is entitled to such width of 18 feet on the northern and southern side.

19. On perusal of the Engineer's Plan annexed to the Advocate Commissioner's report, it is seen that as far as the suit B-schedule property of the 1st respondent is concerned, it is mentioned that the width of the property is 17 feet upto beam rod. As mentioned above, as per the Ex.P1 partition deed, the 1st respondent is entitled to 18 feet width and thus it is seen that so far the construction so made by the 1st respondent is only within her boundaries and as mentioned in the Engineer's Report annexed to the Advocate Commissioner's Report, further 3 inches would be necessary for such plastering of the column and beam concrete and even in such a case, the extent of construction would be only 17 feet 3 inches and obviously less than the extent of land allotted the 1st respondent.

20. As per the suit B schedule property, the 1st respondent is

entitled to 18 feet width and at the same time, the present construction is only to an extent of 17 feet and even if it is plastered, it would be only 17 feet 3 inches and moreover, on perusal of the photographs enclosed in the commissioner's report, it is seen that there is no traces of any new digging in the suit common passage affecting the rights of the appellant at this stage.

21. Admittedly, the suit common passage runs from the Perumal Koil Street to the Jayachandran lane on the northern side and all the appellant and the respondents have the right to use the common passage and such putting up of that gate at the entrance of the appellant's suit C schedule property might be an impediment for the respondents.

22. As the present construction by the 1st respondent is only within her premises, the same cannot be construed to be infringing the rights of the appellant and in such circumstances, this Court is of the view that the conduct of the 1st respondent in such construction cannot be considered as infringing the rights of the appellant at this stage to make out a prima facie case for the appellant. Moreover, as the 1st respondent is putting up construction within her premises,

obviously, if she is restrained from doing so, that too when there is no such infringement over the common passage at this stage, obviously it would be the 1st respondent who would be put to more injury than the appellant while considering the relief of ad interim injunction and further the balance of convenience is also only in favour of the 1st respondent. Under these circumstances, this Court is of the considered view that the appellant is not entitled for the relief of interim injunction.

23. As stated supra, the petitioner/plaintiff is that 'B' schedule property belongs to the first respondent and 'B' schedule property is the common pathway of the petitioner and it is alleged that according to the petitioner that on pillar which is now supposed by the pillar column 3 inches will be reduced in the common area.

24. On perusal of the Engineer's Report and Advocate Commissioner's Report goes to show that the pillar is commencing at 17 feet well within the domain of the area allotted to the first respondent herein.

25. As such a concurrent finding has been rendered by the

Court below, there is pillar has been erected only within the area allotted to the first respondent and furthermore it is the petitioner who had blocked to the pathway leading to the Jayachandran lane and also put up the wooden gate.

26. My attention was drawn to the Engineer's Report and the Advocate Commissioner's Report which categorically shown that the petitioner has deliberately blocked the 4 feet passage to the other allottees in the partition and hence, I find that petitioner has not come to the Court with clean hands.

27. Furthermore, based upon C1, C2, C3 reports, both the Courts below have properly appraised the physical feature of the pillar i.e now being erected by the first respondent which is situated at the 17 feet of the area allotted to the first respondent as per the share of the property in the partition deed. Each party is entitled for 18 feet width and 4 feet along with 110.5 feet is a long common passage.

28. As such the pillar being erected by the first respondent within the area allotted to him under the partition deed, I do not find any factual as averred by the petitioner warranting interference of orders of Courts below and the petitioner has not made out a prima

facie case and the balance of convenience is on the part of the first respondent not on the petitioner. If injunction is granted it will be cause irreparable loss and hardship only to the respondents not to the petitioner and hence, viewing from any stand point, the petitioner is not entitled any relief.

29. In the result, this Civil Revision Petition is dismissed and the order passed by the Courts below are hereby confirmed. No costs. Consequently, connected C.M.Ps are closed.

03.11.2020

Internet :Yes
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To

1. The I Additional City Civil Curt, Chennai
2. The VIII Assistant Court, City Civil Court, Chennnai

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RMT.TEEKAA RAMAN, J.

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