

IN THE COURT OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
DHARMAPURI.

Present: Tmt.U.Monica,M.L.,
Additional District Judge,
Dharmapuri.

Wednesday, this the 8th day of November 2023.

I.A.No.4/2023
in
O.S.No.174/2022

Dhanapal ...Petitioner/1st defendant

/versus/

Murugan ...Respondent/plaintiff

This petition is coming on 1.11.2023 for final hearing before me in the presence of Thiru.J.Kumaresan, Advocate for petitioner and Thiru.A.Sivaraju, Advocate for respondent and upon hearing both side arguments and on perusal of the entire case records and having stood over till this day, this court pronounced the following:

ORDER

This is a petition filed under Order-39, Rule-1 of CPC to grant permanent injunction against the respondent.

2. The case of the petitioner in brief is as follows:

According to petitioner, his brother, plaintiff has filed the suit for partition. For past 20 years the petitioner is in separate possession and enjoyment of the properties. A well is situated in respondent's land. The respondent and his men are preventing

the petitioner from drawing water for agricultural purpose from the well. The respondent who got agitated as petitioner's daughter gave complaint against the plaintiff before the Superintendent of police, Dharmapuri, prevented the petitioner from drawing water from well. Both the petitioner and respondent are having half a share in the well. Hence respondent must be prevented from restraining the petitioner from using the water from the well for agricultural purpose and from digging and installing bore well.

3. The averments in the counter in brief is as follows:

The suit properties are ancestral properties and no partition took place. The petitioner taking advantage of his position as elder member was administering the joint family, agriculture and family milk business. As the petitioner did not give proper account to the joint family the respondent has filed the partition suit. While the suit is pending, the petitioner has constructed a terraced house. Taking advantage of being the elder member, he is creating many documents. He has no right to dig bore well in the joint family property. Hence the petitioner is not entitled to any relief in this petition and the petition is liable to be dismissed.

4. The point for consideration:

Whether the petition is liable to be allowed or not?

5. No oral or documentary evidence adduced on both side. Heard both side arguments.

6. Point:

a) The petitioner alleges that the respondent is preventing him from taking water in the well in which he has got half a share and also digging and installing bore well in the suit property. Hence the respondent must be restrained by way of permanent injunction.

b) The respondent alleges that partition has not taken place and the petitioner cannot be permitted to dig bore well in the joint family property.

c) This is a suit for partition filed among brothers. The case is in the stage of trial. At this stage the petitioner has filed this petition.

d) As both the parties admit that they have share in the well, the respondent cannot prevent the petitioner from taking water from the well for agricultural purpose as petitioner is also a co-owner and entitled to take water.

e) As the suit is pending and the rights of the parties have to be determined, this court is of view if the petitioner is permitted to dig bore well it would create unnecessary problems and multiplicity of proceedings. Hence the petitioner is not entitled to dig bore well. Hence the point for consideration is answered accordingly.

In the result, the petition is allowed in respect of temporary injunction restraining the respondent and his men from preventing the petitioner from taking water in the well. The petition is dismissed in respect of petitioner's

prayer of injunction restraining the respondent and his men from preventing the petitioner for digging bore well in the suit property. In view of the relationship between the parties, no cost is ordered.

Dictated by me, typed by the Steno-typist, corrected and pronounced by me in Open Court on this the 9th day of November 2023.

Additional District Judge,
Dharmapuri.

Petitioners Side Evidence, Exhibits: Nil

Respondents Side Evidence, Exhibits: Nil

Additional District Judge,
Dharmapuri.

Fair Order

I.A.No.4/2023 in

O.S.No.174/2022

Dated:8.11.2023.

