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Sobha vs Ravindran.K.a

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SooperKanoon Citation : sooperkanoon.com/1601402

Court : Kerala

Decided On : Nov-30-2021

Judge : Honourable Mr.Justice V.G.Arun

Appeal No. : OP(C)/322/2020

Appellant : SOBHA

Respondent : Ravindran.K.a

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN TUESDAY, THE 30TH DAY OF NOVEMBER 2021 / 9TH AGRAHAYANA, 1943 AGAINST THE ORDER IN OS 410/2015 OF ADDITIONAL MUNSIFF COURT,CHERTHALA PETITIONERS/PLAINTIFFS/RESPONDENTS IN IA:

1 SOBHA AGED 54 YEARS W/O CHANDRAN, SREESHYLAM FROM KARUKAPPARAMBU LEKSHAM VEEDU,KODAMTHURUTHU VILLAGE, EZHUPUNNA SOUTH.P.O.-688550,CHERTHALA. 2 CHANDRAN, S/O KARUMBAN,SREESHYLAM FROM KARUKAPARAMBU LEKSHAM VEEDU, KODAMTHURUTHU VILLAGE,EZHUPUNNA SOUTH.P.O-688550,CHERTHALA. BY ADVS.

T.JAYAKRISHNAN SRI.R.KRISHNAKUMAR (CHERTHALA)

RESPONDENTS/DEFENDANTS/PETITIONERS IN IA:

1 RAVINDRAN.K.A S/O APPU,ERNAKULAM PROVIDENT FUND QUARTERS NO.8,STAFF QUARTERS,GANDHI NAGAR,EAST OF K.S.R.T.C. BUS STAND, KADAVANTHARA.P.O KOCHI-682 020 2 RAGESH.T.R, S/O RAVEENDRAN.K.A,ERNAKULAM PROVIDENT FUND QUARTERS NO-8 STAFF QUARTERS,GANDHI NAGAR, EAST OF K.S.R.T.C.BUS STAND, KADAVANTHARA.P.O, ERNAKULAM- 682 020 BY ADV SRI.AKHIL K.MADHAV

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 30.11.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 30th day of November, 2021 The challenge in this original petition is against Ext.P5 order by which the trial court appointed an Advocate Commissioner to supervise the construction of water tank by the defendants in plaint scheduled item No.4 property, subject to the final adjudication of the suit and appointed an expert in Building Rules to assist the Commissioner. The essential facts are as under; The petitioners have filed the suit for fixation of the eastern boundary of plaint item No.1 property, for declaration of title over the property and for a consequential mandatory injunction requiring the defendants to remove the illegal constructions within the property. Plaint schedule item No.1 is the petitioners property as a whole, item No.2 is the portion over which the defendants are alleged to have trespassed, item No.3 is a foundation erected by

the defendants within item No.2 and item No.4 is a septage tank constructed in item No.2. By Ext.P1 ex parte injunction, the trial court

restrained the defendants from trespassing into the plaint schedule property and from continuing the construction of the foundation (item No.3) and the septic tank (item No.4). Later, at the instance of the defendants, the injunction order was modified and the defendants restrained only from making constructions in plaint schedule item Nos. 1 and 2 properties and constructions in violation of the Building Rules. Thereafter, defendants filed Ext.P4 application, seeking the appointment of an Advocate Commissioner to supervise the construction work of a water tank in replacing the septic tank. The prayer was allowed by Ext.P5 order and an expert directed to be appointed to assist the plaintiff. Aggrieved, this original petition is filed.

2. Learned Counsel for the petitioners raised strong objection against the manner in which Ext.P5

order is passed pointing out that the specific case of

the petitioners is that item No.4 septic tank is constructed inside their property and the trial court, being prima facie convinced, had granted Ext.P1 ex parte order of injunction. It is submitted that even under Ext.P2 modified order, defendants are restrained from encroaching upon and effecting constructions in plaint Item Nos.1 and 2. Hence, even after the modification, petitioners cannot seek to construct the water tank by replacing the septic tank, which is within plaint item No.2. According to the learned Counsel, the direction in Ext.P5 is diametrically opposed to the injunction granted by the same court.

3. Learned Counsel for the respondents

submitted that the application for appointment of Commissioner, to supervise the construction of the water tank was necessitated, as they are having no other means for storage of portable water. Learned Counsel explained that though, in Ext.P4, the appointment of Advocate Commissioner is for construction of item No.4 water tank, the defendants only want to construct the water tank within their

property.

4. Having heard the learned Counsel on either

side, I find that the dispute is essentially centered around item No.2 property, alleged to have trespassed upon by the defendants. The defendants want to put up their water tank within that portion. Being so, it is only appropriate that the dispute is set at rest by measuring out the property and demarcating the boundary. Hence, Ext.P5 order is modified to the following effect.

(i) The Advocate Commissioner appointed by

the court shall identify, measure and demarcate the common boundary between the properties of the petitioners and the respondents, with the assistance of a surveyor. After demarcation, the defendants can construct the water tank within their property under the supervision of the Advocate Commissioner.

(ii) The Advocate Commissioner appointed by

the court being competent enough to ensure that construction of the water tank is in accordance with the stipulations in the Kerala Panchayath Building Rules, there is no requirement to appoint any expert in Building Rules.

5. Learned Counsel for the respondents submitted

that the construction of water tank is an urgent necessity in view of the ensuing summer. The court below shall direct the Advocate Commissioner to execute the warrant of commission as expeditiously as possible. The parties are at liberty to file work memos and shall bear the remuneration of the Advocate Commissioner and the surveyor, equally. The original petition is disposed of with the above directions. Sd/- V.G.ARUN JUDGE

NB/30-11 APPENDIX OF OP(C) 322/2020 PETITIONERS EXHIBITS: EXHIBIT P1 A TRUE COPY OF INTERIM INJUNCTION ORDER PASSED IN I.A.NO.2176/2015 IN O.S.NO.410/2015 DATED 15.6.2015. EXHIBIT P2 A TRUE COPY OF ORDER PASSED IN I.A.N0.335/2016 IN O.S.NO.410/2015 DATED 4.3.2016 EXHIBIT P3 A TRUE COPY OF I.A.NO.612/2019 IN OS.N0.410/2015 DATED 18.2.2019 EXHIBIT P4 A TRUE COPY OF OBJECTION TO I.A.NO.612/2019 DATED 1.3.2019 EXHIBIT P5 A TRUE COPY OF ORDER PASSED IN I.A.NO.612/19 IN O.S.NO.410/2015 DATED 18.10.2019 EXHIBIT P6 A TRUE COPY OF PLAINT IN O.S.NO.410/2015 DATED 15.6.2015 EXHIBIT P7 A TRUE COPY OF COMMISSION REPORT FILED BY THE ADVOCATE COMMISSIONER AS PER ORDERS PASSED IN I.A.NO.2177/2015 DATED 1-7-2015. RESPONDENTS EXHIBITS: NIL TRUE COPY P.A TO JUDGE

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