

Shri Ramachandra Jois vs Shri Ishwar Bhatta

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Court : Karnataka Orders

Decided On : Apr-01-2025

Judge : M.I.Arun

Appeal No. : WP/3070/2020

Appellant : Shri Ramachandra Jois

Respondent : Shri Ishwar Bhatta

Judgement :

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF APRIL, 2025 BEFORE THE HON'BLE
MR JUSTICE M.I.ARUN WRIT PETITION NO. 3070 OF 2020 (GM-CPC)
BETWEEN:

1. SHRI. RAMACHANDRA JOIS

S/O SHIVRAMA JOIS AGE: 46 YEARS R/O: KALAKATTE, MENASE
VILLAGE BHARATI NAGAR POST, TALUK: SRINGERI DISTRICT:
CHIKMAGALUR-577 139. PETITIONER (BY SRI SANDESH P.
NADIGER, ADVOCATE FOR SRI G.B. SHASTRY, ADVOCATE) AND:

1. SHRI ISHWAR BHATTA

S/O LATE NAGU BHATTA AGED 52 YEARS Digitally R/O. KALKATTE, MENASE VILLAGE signed by H K BHARATI NAGAR POST HEMA TALUK: SRINGERI Location: HIGH COURT DISTRICT: CHIKMAGALUR-577 139. OF KARNATAKA RESPONDENT (NOTICE TO RESPONDENT IS HELD SUFFICIENT VIDE COURT ORDER DATED 18.12.2023.) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DATED 16.11.2019 PASSED ON I.A.NO.7 IN O.S.NO.04/2015 ON THE FILE OF THE CIVIL JUDGE AND JMFC., SRINGERI VIDE ANNEXURE-A TO MEET THE ENDS OF JUSTICE AND EQUITY, ETC. THIS PETITION COMING ON FOR ORDERS, THROUGH

PHYSICAL HEARING/VIDEO CONFERENCING THIS DAY, ORDER

WAS MADE THEREIN AS UNDER: CORAM: HON'BLE MR JUSTICE M.I.ARUN

ORAL ORDER

Learned advocate for the petitioner is present. None appears for the respondent.

2. The petitioner preferred O.S.No.04/2015 before the Civil Judge and JMFC, Shringeri with the following prayers: " FQ, . ZED.

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3. The aforementioned original suit has been filed

by the petitioner on the ground that he is the owner of the schedule property and he has a well in the schedule property and the defendant has been contaminating/destroying the well by leaving sewage/waste water into the same from his premises. On the said ground, the petitioner has field a suit for legal injury already caused to the petitioner at the time of filing the suit.

4. The respondent has filed his written statement and also filed I.A.No.7 with the following prayers:

"That for the reasons set-out and sworn to in the annexed affidavit, it is prayed that the Court may be pleased to appoint any Advocate of Sringeri as Court Commissioner to hold local inspection of the suit schedule property to observe and report whether any waste/dirty water of the house of the defendant is leading to the suit schedule Well and also to observe and report the underground waste water pipe line laid behind the house of the plaintiff i.e. at the western side of the house, to carry the

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waste water of the house of the defendant, in the interest of justice and equity."

5. The aforementioned I.A. has been filed for appointment of a Court Commissioner to find out whether presently respondent is contaminating/destroying the well belonging to the petitioner.

6. The trial Court has allowed the application and passed the following order:

"I.A.No.7 filed by the plaintiff under Order

26 Rule 9 read with section 151 of CPC is hereby allowed. The Advocate is hereby appointed as court commissioner for conducting inspection of the properties of the plaintiff and defendant and suit schedule well."

7. The aforementioned order has been challenged

by the petitioner on the ground that the original suit has been filed for recovery of damages for contaminating/destroying the well by the respondent and it is not a case for injunction restraining the defendant from causing further contamination/destroying the well -5- and under the circumstances, the trial Court was not required to appoint a Court Commissioner to find out whether there has been contamination caused at present. It is further submitted that the petitioner has let in sufficient evidence to establish his case and that the application has

been filed at a belated stage when the matter was posted for arguments with the sole intention of dragging the proceedings and the trial Court has erred in allowing the said application.

8. The question that arises for consideration is whether the trial Court erred in allowing the application as prayed for by the respondents.

9. As contended by the petitioner, the suit is filed

for recovery of damages for legal injury already caused to the petitioner by respondent. It is not a suit for injunction to find out whether the defendant is contaminating/destroying the well belonging to the petitioner. The trial Court has ignored this particular fact and passed the impugned order. Under the said -6- circumstances, I am of the opinion that the appointment of a commissioner as directed by the trial Court is not necessary to decide the dispute between the parties more so in the light of the issues framed which are as under:

"1. Whether the plaintiff proves that he has constructed the Well in the suit schedule property by spending Rs.1,50,000/-?

2. Whether plaintiff proves that the defendant has destroyed the Well which was constructed in the suit schedule property?

3. Whether defendant proves that the plaintiff has encroached his property?

4. Whether plaintiff entitled for the relief sought for?

5. What order or decree?"

10. Hence the following:

ORDER

i) The impugned order dated 16.11.2019 passed on I.A.No.7 in O.S.No.04/2015 on the file of Civil Judge and JMFC, Sringeri is hereby set aside; -7- ii) I.A.No.7 filed in O.S.No.04/2015 by respondent/defendant therein is hereby dismissed; iii) The writ petition is allowed accordingly. Sd/- (M.I.ARUN) JUDGE PGG List No.: 1 Sl

No.: 18

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