

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2015

CORAM

THE HONOURABLE MR. JUSTICE **D.HARIPARANTHAMAN**

C.R.P.(PD)No.3499 of 2015 and
M.P.No.1 of 2015

J.Kokilambal

... Petitioner

vs.

P.Saradha

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 14.07.2015 in I.A.No.8125/2015 in O.S.No.3257/2015 passed by the learned XV Assistant Judge, City Civil Court at Chennai in appointing Advocate Commissioner in Injunction Petition filed by the petitioner/plaintiff in I.A.No.8125/2015.

For Petitioner : Mr.S.Rajendran

ORDER

The revision petitioner is the defendant in O.S.No.3257 of 2015 on the file of the XV Assistant Judge, City Civil Court, Chennai and the respondent is the plaintiff.

2. The relief sought for in the suit was to declare that the respondent/plaintiff is entitled to continue to enjoy the easement of light and air through the opening situate on the rear side of the plaintiff's property described in the schedule to the plaint and for a permanent injunction

restraining the defendant from interfering with the peaceful enjoyment of the easement on the strip of land on the rear side of the plaintiff's property.

3. While so, the respondent/plaintiff filed I.A.No.8125 of 2015 in O.S.No.3257 of 2015 for interim injunction under Order 39 Rules 1 and 2 of CPC. By an order dated 14.07.2015, the Trial Court passed the following order:-

"In the result, upon considering the materials available in this case to arrive at a proper conclusion this Court has to necessarily appoint an advocate commissioner to ascertain in which portion the construction is going on. Hence Mr.S.Aswin, Advocate is appointed as an Advocate Commissioner who shall first measure the plaintiffs property as per the sale deed produced by the plaintiff and also to find out in which portion the construction is going on and also find out is there any encroachment made on the rear side of the plaintiff's property and note down the physical features and file a detailed report before this court within a month. The advocate commissioner is directed to take photographs of the entire property. The Advocate Commissioner who is required to issue notice to both parties and their respective counsels in advance before inspection Rs.7,500/- is fixed as the remuneration of the Advocate Commissioner and the same shall be paid by the petitioner directly to the Advocate Commissioner. The Advocate Commissioner is directed to file a detailed report and plan within a month. For payment of remuneration. Call on 24.07.2015."

This revision petition is against the aforesaid order dated 14.07.2015.

4. Heard the learned counsel for the petitioner.

5. The learned counsel for the petitioner contended that the Trial Court was not correct in appointing Advocate Commissioner in the application filed by the respondent/plaintiff for interim injunction, as the respondent did not seek to appoint Advocate Commissioner.

6. I am not inclined to agree with the submission made by the learned counsel for the petitioner. The Trial Court can appoint Advocate Commissioner to ascertain certain facts, in view of the power granted under Order 26 Rule 9 CPC as stated therein.

7. At this juncture, the learned counsel for the petitioner has submitted that this Court may modify the order passed by the Trial Court by directing the Advocate Commissioner to take the assistance of Taluk Surveyor. I am of the view that the respondent/plaintiff could have no objection for the said modification.

8. In view of the above, the order dated 14.07.2015 is modified to the extent that the Advocate Commissioner appointed by the Trial Court shall take the assistance of Taluk Surveyor for measuring the property as ordered by the Trial Court.

D.HARIPARANTHAMAN,J.,

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9. The Civil Revision Petition is disposed of accordingly. No costs.
Consequently, connected miscellaneous petition is closed.

28.08.2015

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Note : Issue order copy on 01.09.2015

To

XV Assistant Judge, City Civil Court at Chennai

C.R.P.(PD)No.3499 of 2015