

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2015

CORAM

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

C.R.P.(PD)No.3865 of 2015 and
M.P.No.1 of 2015

J.Arivalagan

... Petitioner

vs.

R.Viji

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order passed by the learned VI Assistant Judge, City Civil Court at Chennai dated 18.08.2015 in I.A.No.10645 of 2015 in O.S.No.3503 of 2013.

For Petitioner : Mr.T.R.Rajaraman for
Mr.V.V.Sairam

For Respondent : Mr.C.Prabhakaran for
Mr.K.Manikandan

ORDER

The revision petitioner is the plaintiff in O.S.No.3503 of 2013 on the file of VI Assistant Judge, City Civil Court, Chennai. The respondent is the defendant therein. The prayer in the suit is for permanent injunction restraining the respondent from putting up any construction in the property bearing New Door No.16, Old Door No.13, Palayakar Street, II Lane, Ayanavaram, Chennai, measuring an extent of 726 sq.ft., morefully described in the schedule and more particularly at the northwest corner of the suit property measuring 3 ft. x 6 ft.

2. While so, the respondent herein filed O.S.No.853 of 2013 on the file of the same Court. The revision petitioner is the second defendant therein. The prayer in O.S.No.853 of 2013 is as follows:-

"A) Pass judgment and decree of Mandatory Injunction directing the 4 & 5th defendant to demolish the unauthorised construction put up by the 1st, 2nd & 3rd defendants at Old No.13/New No.16, 2nd Lane, Palayakara Street, Aynavaram, Chennai -23 (B-scheduled)

B) Pass judgment and decree of permanent injunction restraining the 1st, 2nd and 3rd defendants their men, agents, power agents, servants, or anyone claiming under them from in any manner disturbing the peaceful possession and causing hindrance to constructing compound in the plaintiff's property situated at No.12, 2nd lane, Palayakara Street, Aynavaram, Chennai -23 (A-scheduled)."

3. At that stage, the respondent herein filed I.A.No.10645 of 2015 in O.S.No.3503 of 2013 for appointment of Advocate Commissioner to make inspection in the schedule property with the help of a qualified civil engineer and to note down the physical features of the property to ascertain the extent of encroachment made by the revision petitioner and the nature of damage to the property of the respondent herein, which is adjacent to the schedule mentioned property and also to file a report, sketch with photographs.

4. The Trial Court, by an order dated 18.08.2015 allowed the said application in I.A.No.10645 of 2015. This revision petition is against the aforesaid order dated 18.08.2015.

5. Heard both sides.

6. The learned counsel for the petitioner vehemently contended that the Trial Court erred in allowing the application filed by the respondent for appointment of Commissioner in the suit filed by the revision petitioner. He would further contend that the Advocate Commissioner cannot be appointed to gather evidence. The Advocate Commissioner could simply record the physical features and he need not find out the alleged encroachment, if any.

7. On the other hand, the learned counsel for the respondent has submitted that there is nothing illegal in the respondent filing interim application for appointment of Advocate Commissioner in the suit filed by the revision petitioner. He would submit that it is too technical since both the suits are tried together. It is further submitted that both parties make allegations against each other that they are encroaching the common passage. Therefore, the truth has to be found out and hence, Advocate Commissioner was appointed by the Trial Court. Though the petitioner sought for appointment of Advocate Commissioner to ascertain the extent of encroachment made by the respondent, the Trial Court had directed to find out the encroachment made by either of the parties.

8. I have considered the submissions made by the learned counsel on either side.

9. The Trial Court took note of the fact that both parties make allegations against each other that they are encroaching the common passage. In these circumstances, the Trial Court appointed Advocate Commissioner to give a report on the allegation relating to encroachment. The Trial Court has noted in paragraph 8 of the order about the allegation made by both parties about the encroachment made by each other.

10. Thereafter, the Trial Court passed the following order in Paragraph 9 and the same is extracted hereunder:-

"9. In the result this petition is allowed and thereby Advocate Ms.Mayadhanabal is appointed as Advocate Commissioner, who shall after serving notice to either side inspect the suit property and the suit property in O.S.No.853/2013 and with the help of qualified licensed surveyor take measurements of the respective suit property in both the suits and find out is there any encroachment of the properties and in the passage and file detailed report with sketch and the report and sketch of the qualified licensed surveyor. The Advocate Commissioner is permitted to take photographs during his inspection. Fee of the Advocate Commissioner is fixed at Rs.8,000/- and the same shall be paid by the petitioner/defendant. Report by 26.08.2015."

11. The Trial Court in paragraph 9 of the order, dated 18.08.2015, has only directed to find out whether there was any encroachment of the properties and in respect of common passage and nowhere, it has directed to find out any encroachment made by the revision petitioner. Therefore, an Advocate

Commissioner was appointed only to find out whether there was any encroachment of the properties and in respect of the common passage. I do not find any infirmity in the order passed by the Trial Court.

12. In view of the above, this Civil Revision petition is dismissed. It is stated that already there was a direction to dispose of the suit within a period of four months. However, in view of the appointment of Advocate Commissioner, a further period of four months is granted to dispose of the suit. No costs.

29.09.2015

Index : Yes/No

Note : Issue the order copy on 06.10.2015

svki

To

VI Assistant Judge,
City Civil Court, Chennai

D.HARIPARANTHAMAN,J.,

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C.R.P.(PD)No.3865 of 2015

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