

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **17.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.526 of 2015 and
M.P.No.1 of 2015

V.Arumugam

...Petitioner

versus

1.The Chairman,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai, Chennai - 600 005.

2.B.Rani

3.B.Ramesh

4.B.Subramani

5.B.Saravanan

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order made in I.A.No.9856 of 2013 in O.S.No.3843 of 2013 dated 05.11.2014 on the file of II Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.G.Annamalai

For Respondents : Mr.B.Kesavan for R1
No appearance for R2 to R5

ORDER

This Civil Revision Petition is directed against the order dated 5

November 2014 in I.A.No.9856 of 2013 dismissing the application filed by the petitioner for appointment of Advocate Commissioner to inspect the suit property and submit a report.

2. Heard the learned Counsel for the petitioner and the learned counsel for the first respondent. None appears on behalf of other respondents, in spite of service.

3. The petitioner filed the suit for declaration and mandatory injunction with respect to the suit property. The suit was contested by the second respondent by filing written statement.

4. The petitioner filed the application in I.A.No.9856 of 2013 for appointment of Advocate Commissioner to inspect the property for the purpose of reporting about the physical features including the extent of encroachment made by the second respondent.

5. The learned Trial Judge dismissed the application with an observation that it is for the petitioner to produce evidence in support of his case pleaded in the plaint.

6. The suit being one for declaration and mandatory injunction, the Trial Court has to fix the identity of the property. Since the relief of mandatory injunction is also sought, the Court should be in a position to ascertain the exact portion of the property, which has to be restored. This aspect was not considered by the learned Trial Judge. I am therefore of the view that the impugned order is liable to be set aside.

7. The order dated 5 November 2014 is set aside. The application in I.A.No.9856 of 2013 is allowed.

8. In the up shot, I allow the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

17.11.2016

Index:Yes/No

Note : Issue order copy by 25.11.2016

svki

To

The II Assistant Judge,
City Civil Court, Chennai.

K.K.SASIDHARAN, J.

(svki)

C.R.P.(P.D.) No.526 of 2015

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