

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2016

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The Hon'ble Mr.Justice K.K.Sasidharan

C.R.P.(PD)Nos.1031 to 1036 of 2016

and

C.M.P.Nos.5775 to 5780 of 2016

C.R.P.(PD)No.1031 of 2016

The Member Secretary,
Chennai Metropolitan Development Authority,
Thalaimuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai- 600 008.

...Petitioner

Vs.

1. M.P.S.Retail Flower Shop,
Rep. by its Proprietor,
Mr.M.P.Muthuraj,
No.10, Badriyan Street,
Flower Bazaar,
George Town, Chennai – 600 001.

2. The Commissioner,
Corporation of Chennai,
Chennai – 600 003.

... Respondents

Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decreetal order passed by the V Assistant Judge, City Civil Court, Chennai, in and by its Order, dated 30.04.2016, in I.A.No.17224 of 2012, in O.S.No.2794 of 2012.

In all C.R.Ps.

For Petitioners	:	Mr.C.Johnson
For Respondent-1	:	No appearance
For Respondent-2	:	Mr.V.C.Selvasekaran Standing Counsel for Corporation

COMMON ORDER

The first respondent in the respective Civil Revision Petitions, filed Civil Suits, in O.S.Nos.2794, 2797, 2801, 5951 of 2012 and O.S.Nos.678 and 689 of 2013, before the XVI Assistant City Civil Court, Chennai, praying for a decree of declaration that they are the Retail Flower Vendors, doing business in the schedule to the plaint, and for permanent injunction, restraining the petitioner from interfering with their peaceful conduct of business.

2. The Suits were opposed by the petitioner, by filing

written statements.

3. Before the trial Court, the first respondent, in the respective Civil Revision Petitions filed Applications for appointment of an Advocate Commissioner to inspect the property and to measure the property and note down its physical features. The learned trial Judge allowed the Applications. Feeling aggrieved, the Chennai Metropolitan Development Authority, Chennai, is before this Court.

4. Heard the learned counsel for the petitioner and the learned Standing Counsel for Corporation. None appears on behalf of the first respondent, in the respective Civil Revision Petitions.

5. The first respondent, in the respective Civil Revision Petitions, filed Suits claiming that they are in possession of the site allotted by the petitioner herein, and they are doing business as Retail Flower Vendors, and the affidavits filed in support of the Interlocutory Applications for appointment of an Advocate Commissioner indicates that it was only to prove their possession of the respective area and the business in retail flower vending, they have sought appointment of Advocate Commissioner.

6. In a suit for declaration, and consequential relief, there is no question of appointing Advocate Commissioner, and that too, for the purpose of reporting about the possession of the shops by the parties. This aspect was not considered by the learned trial Judge. I am, therefore, of the view that the trial Court was not correct in appointing Advocate Commissioner in respect of the Applications filed by the plaintiff in the respective Suits.

7. In the result, the Orders impugned in these Civil Revision Petitions are set aside. The Interlocutory Applications filed for appointment of Advocate Commissioner are dismissed.

8. The Civil Revision Petitions are allowed, as indicated above. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

25.11.2016

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Index : Yes/No

Internet ; Yes/No

To

V Assistant Judge, City Civil Court,
Chennai.

K.K.Sasidharan,J.,

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