

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2016

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THE HONOURABLE MR.JUSTICE C.T.SELVAM

C.R.P.(PD) No.2418 of 2016
and CMP.No.12460 of 2016

N.S.Deenadayalan @ N.S.Kutty

... Petitioner

Vs.

V.Neelambal

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 14.09.2015 made in IA.No.6543 of 2015 in OS.No.6360 of 2013 on the file of the XVIII Assistant City Civil Court, Chennai.

For Petitioner : Mr.B.Sivakumar.

ORDER

This revision challenges the order of learned XVIII Assistant Judge, City Civil Court, Chennai made in IA.No.6543 of 2016 in OS.No.6360 of 2013, on 14.09.2015.

2.O.S.No.218 of 2014 is an action moved by respondent/plaintiff seeking relief of permanent injunction restraining the defendant, his men, agents or anybody claiming under him from proceeding with the construction in item No.1 of the plaint schedule property. Therein, he has moved I.A.No.6543 of 2015 seeking appointment of Advocate Commissioner towards noting down the physical features of the suit property. Such application has been resisted by petitioner/defendant primarily contending that the schedule of property found in the suit varies from the schedule of property in the sale deed in favour of the respondent/plaintiff. The Court below, taking note of the position that such submission is correct and the difference is in one of the boundaries and also taking note that there is no dispute regards extent of property and that the petitioner/defendant holds property adjacent to the respondent/plaintiff's property, has found that what is constructed/may be constructed by the petitioner/defendant may amount to encroachment and allowed such application. There against, petitioner/defendant filed this revision.

3.Heard learned counsel for petitioner.

4. In allowing the application, the Court below has reasoned that appointment of an Advocate Commissioner would be of much use in arriving at a just decision. It is the contention of petitioner/defendant that through the appointment of Advocate Commissioner, the respondent/plaintiff is seeking to gather evidence. When judicial discretion has been exercised by the Court below, this Court would not interfere. The Court below has erroneously required the Advocate Commissioner also to note down the encroachment if any in the plaintiff's property. But for such reason, this Court does not consider it necessary to issue notice to the respondent. The interests of justice can be secured by informing that the Advocate Commissioner appointed shall inspect the property and submit his report on the physical features i.e, to point out the area where construction is taken place or being put up. Thereafter, it is for the Court below to determine whether the constructed building or the process of construction amounts to encroachment.

5. With the above observation, the civil revision stands dismissed. If the Advocate Commissioner thus far has not completed the work assigned to him, he shall cause notice to both

parties and thereafter conduct inspection. If the Advocate Commissioner has already completed his task, he may file his report. As in any other case, it will be open to both parties to file objections against the Advocate Commissioner's report and the Court below shall consider the same on merits. Consequently, connected miscellaneous petition is closed. No costs.

22.08.2016

To

The XVIII Assistant Judge, City Civil Court, Chennai.

C.T.SELVAM, J
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