

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2016

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

C.R.P.(PD) No.2428 of 2016

and

C.M.P.No.12558 of 2016

The Member Secretary,
Chennai Metropolitan Development Authority,
Thalaimuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 08.
Petitioner

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vs.

1.Vellaimalai Retail Flower Shop,
rep. by Proprietor,
R.Marimuthu,
No.21/43, Badriyan Street,
Flower Bazaar,
George Town, Chennai – 600001.

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

Respondents

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Civil Revision Petition filed under Section 115 of the C.P.C.,
against the fair and final order dated 30.4.2015 in I.A.No.17229 of
2012 in O.S.No.2799 of 2012 passed by the V Assistant City Civil
Court at Chennai.

For petitioner : Mr.C.Johnson

For 1st respondent: No appearance

For 2nd respondent: Mr.V.C.Selvasekaran

ORDER

The first respondent in the Civil Revision Petition filed a Civil Suit in O.S.No.2799 of 2012 before the XVI Assistant City Civil Court, Chennai, praying for a decree of declaration that the proprietor is a Retail Flower Vendor, doing business in the schedule to the plaint, and for permanent injunction, restraining the petitioner from interfering with the peaceful conduct of business.

2. The Suit was resisted by the petitioner, by filing written statement.

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

4. Heard the learned counsel for the petitioner and the learned Standing Counsel for Chennai Corporation. None appears on behalf of the first respondent.

5. The first respondent filed the Suit claiming that its proprietor is in possession of the site allotted by the petitioner, and he is doing business as a Retail Flower Vendor.

6. The affidavit filed in support of the Interlocutory Application for appointment of Advocate Commissioner indicates that it was only to prove possession of the area and the business in retail flower vending, the petitioner has sought the appointment of Advocate Commissioner.

7. 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 shop by the plaintiff. 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.

8. In the result, the Order impugned in this Civil Revision Petition is set aside. The Interlocutory Application filed for appointment of Advocate Commissioner is dismissed.

9. The Civil Revision Petition is allowed, as indicated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Index : yes / no
Internet :yes / no
asvm

30.11.2016

Copy to:

The V Assistant Judge,
City Civil Court, Chennai.

K.K.SASIDHARAN, J

(asvm)

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