IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **16.11.2016**

CORAM:

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

C.R.P.(P.D.) No.3536 of 2016

1.R.Janakiraman
2.J.Rajesh : Petitioners

versus

1. Revathi Raghavan
2. J.Vignesh : Respondents

PRAYER: Revision filed against the order dated 24.10.2016, in I.A.No.981/2016 in O.S.No.537 of 2016 on the file of the Principal District Munsif, Alandur.

For petitioners :: Mr.T.R.Rajagopal, Senior Counsel,
for M/s.T.S.Vijayaraghavan

For respondents :: Mr.P.T.Asha,
for M/s.Sarvabhauman Associates

O R D E R

This civil revision petition is directed against the order dated 24 October 2016 rejecting the memo filed by the counsel for the petitioner to vacate the interim order on the ground that the first respondent failed to comply with the statutory mandate under Order 39 Rule 3 CPC.

2. This civil revision petition came up for hearing on 14 November 2016. After hearing the learned senior counsel for the petitioners and the learned counsel for the first respondent on caveat, I have passed the following order :-

> "*The learned Senior Counsel for the petitioners contended that even without ascertaining as to whether the respondents has been enjoying the access through B Schedule property, in a suit for mandatory injunction, the Trial Court granted interim injunction. The learned Senior Counsel disputed the contention taken by the respondents that she has been using the B Schedule property for access to her A Schedule property. The learned Senior Counsel wanted stay of the order of the Trial Court or at least status-quo till a decision taken on merits by the Trial Court in I.A.No.981 of 2016.*
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> *2. The learned counsel for the respondent, who is on caveat, contended that even without demolishing the compound wall constructed by the petitioners in B Schedule property, it is possible for the respondent to gain entry through B Schedule property to reach A Schedule property. The learned counsel further submitted that in case an Advocate Commission is taken, it would reveal that there is a clear access to A Schedule property through B Schedule property*

notwithstanding the construction of the compound wall by the petitioners.

3. There is a dispute with respect to the pathway. Even to decide the present Civil Revision Petition, it is necessary to call for a report by issuing commission.

4. The learned Senior Counsel for the petitioners and the learned counsel for the respondent also wanted to depute Advocate Commissioner to inspect the property before hearing the Revision Petition.

5. Ms.G.Sumitra, Advocate, 35 Law Chambers, High Court (Mobile No.98412 56658) and Mr.M.Govindaraju, Advocate, The Madras Bar Association, High Court, Chennai (Mobile No.99408 28292), who are present in Court are appointed as Advocate Commissioners to inspect the property in question forthwith.

6. The Advocate Commissioners are directed to inspect the B Schedule property and report about the compound wall and whether without demolishing the compound wall in B Schedule it would be possible for the respondent to gain access to her property. It is open to the petitioners and the respondents to give work memo to the Advocate Commissioners. The Advocate Commissioners are permitted to take the assistance of an Engineer to draw the plan of

the property.

7. Since the matter is posted on 16.11.2016, the Advocate Commissioners shall inspect the property and submit the report by 05.00 p.m. tomorrow (15.11.2016) with advance copy to the learned counsel for the petitioners on record and the learned counsel for the respondents.

8. The parties are directed to pay a sum of Rs.15,000/- (Rupees Fifteen Thousand Only) ***EACH*** *to the Advocate Commissioners. The amount shall be borne equally by the petitioners and the respondents.*

9. Post on 16.11.2016 for filing report.

3. The Advocate Commissioner appointed by this Court by order dated 14 November 2016, filed a report indicating that without demolishing the compound wall in B Schedule, it would not be possible for the first respondent to gain access to her property.

4. The Trial Court granted an order of injunction restraining the petitioners from preventing the respondent from using the B Schedule property as common passage. In view of the report submitted by the Advocate Commissioner, the petitioners are correct in their contention that the order of injunction was given without ascertaining the factual position.

5. After hearing the learned Senior counsel for the petitioners and the learned counsel for the first respondent, I am of the view that the matter requires fresh consideration by the learned Trial Judge.

6. The learned Trial Judge is directed to give two week's time from the date of receipt of a copy of the order, to the petitioners to file counter in I.A.No.981 of 2016. Thereafter, two weeks time should be given to the first respondent to file a rejoinder if any. The learned Trial Judge is directed to dispose of the interlocutory application in I.A.No.981 of 2016 thereafter on merits and as per law, as expeditiously as possible and in any case, within a period of three weeks.

7. The learned Advocate Commissioner has reported about the status quo as on date. The said status quo shall be maintained till a decision is taken by the learned Trial Judge one way or the other in I.A.No.984 of 2016.

8. The learned counsel for the first respondent submitted that liberty should be given to take out a commission to conduct a comprehensive inspection of the suit property with the assistance of the official surveyor. It is needless to point out that in case any such application is filed the same shall be considered and disposed of by the learned Trial Judge on merits

K.K.SASIDHARAN, J.

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notwithstanding the appointment of Advocate Commissioner by this Court. In short, Advocate Commissioner was appointed by this Court only to ascertain the status quo for the purpose of deciding the civil revision petition.

9. The civil revision petition is disposed of with the above direction. No costs. Consequently, C.M.P.Nos17992 and 17993 of 2016 are closed.

16.11.2016

Index:Yes/no
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To
The Principal District Munsif, Alandur.

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