

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.420 of 2016

and

C.M.P.No.2221 of 2016

1. Muthulakshmi

2. Nalini

3. Ashokan

4. Rajan

... Petitioners

VS.

1. Selvaraj

2. Anbumani

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order passed in I.A.No.4059 of 2015 in O.S.No.4589 of 2014 on the file of the XVI Assistant City Civil Court, Chennai, dated 31.08.2015.

For Petitioner : Mr.G.Suryanarayanan

For Respondent-1: Mr.Ravichandan Sundaresan

ORDER

This revision has been filed against the order of the trial Court appointing an Advocate Commissioner to make a local inspection of the suit properties and submit a report regarding their physical features.

2. The first respondent herein filed O.S.No.4589 of 2014 on the file of XVI City Civil Court Judge, Chennai for mandatory injunction directing the petitioners 1 to 4 herein / defendants 1, 2, 4 and 5 in the original suit to remove the alleged illegal construction put up over the common pathway in the ground floor and first floor of the property described as 'G' schedule in the plaint, on the premise that it is a common passage belonging to the petitioners herein and the second respondent and that the property belonging to the second respondent was purchased by the first respondent / plaintiff along with the right over the common passage. The respondents / defendants do not dispute the existence of a 4 feet passage.

3. The revision petitioners claim that the first respondent did not either derive any title to portion claimed by him as one purchased by him or derive any common right in the alleged common passage. In view of the divergent stands taken by the parties, in order to elucidate the fact in issue and to help the Court to apprise the evidence to be led in proper perspective, the first respondent herein /plaintiff filed I.A.4059 of 2015 praying for appointment of an Advocate Commissioner for the purpose of making a local inspection of the suit properties and submitting a report. Though the application was

resisted by the revision petitioners herein, the learned trial Judge, rejecting the objections raised by the revision petitioners, allowed the application and appointed an Advocate Commissioner. The said order is challenged in the present Civil Revision Petition.

4. Along with the plaint, the first respondent has produced a rough sketch showing various portions allotted to the defendants 1 to 5 in the oral partition alleged by him. As per the plan, tiny plots measuring 168 sq.ft each are shown to be that of the revision petitioners and the Southern most plot measuring 200 sq.ft is shown to be the portion allotted to the second respondent from whom the first respondent (plaintiff) purchased. According to the revision petitioners, the second respondent did not have any salable interest and the alleged sale made by the second respondent in favour of the first respondent / plaintiff is not valid. In the light of the controversial stands taken by both parties, the trial Court felt that appointment of a Commissioner to make a local inspection of the suit property and submit a report and plan will help the Court to understand the pleadings and it would also eliminate necessity of voluminous evidence being recorded. Accordingly, the learned trial Court has allowed the said petition and appointed an advocate Commissioner.

5. The challenge made to the order passed by the learned trial Judge cannot succeed because the revision petitioners are not going to be affected in any manner by the inspection of the property by the Advocate Commissioner to note the physical features. The report of the Commissioner and the plan will help the Court to localise the point in issue and understand the evidence to be adduced on both sides. The report of the Commissioner cannot be taken as the proof of the plaintiff's case. On the other hand, the parties have to lead evidence in support of their claims including the question regarding the existence or otherwise of the common passage and also regarding the alleged right of the first respondent / plaintiff to use the common passage unhindered by the acts of the revision petitioners. When such evidence is adduced, the Commissioner's report will provide a guiding light to understand the evidence in a proper manner and come to a correct conclusion. Moreover, during the course of the hearing of the Civil Revision Petition, it is brought to the notice of the Court that the Commissioner has already visited the suit properties and submitted a report and plan. The revision petitioners and the first respondent shall have a right to file objections to the Commissioner's report, if they find discrepancy in the report of the Commissioner. Hence, the challenge made to the impugned order cannot succeed.

6. For all the reasons stated above, the Civil Revision Petition is dismissed with an observation that the parties shall have right to file objections to the Commissioner's report. No costs. Consequently, the connected miscellaneous petition is closed.

01.03.2016

Index: Yes/No

Internet: yes/No

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To
The XVI Assistant City Civil Court,
Chennai,

P.R.SHIVAKUMAR.J

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