

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

C.R.P.(PD) No.74 of 2016

And

C.M.P.No.379 of 2016

1.Tmt.G.Sulochana
2.G.Jayachandran
3.G.Stalin
4.G.Subramani
5.J.Karthik

... Petitioners

Vs.

1.M.Chandran
2.M.Raman
3.M.Lakshmanan

4.The Collector of Chennai
Having office at Office of Collector,
Rajaji Salai, Chennai – 600 001.

5.The Commissioner of Chennai Corporation
Having office at Corporation of Chennai
Rippon Buildings, EVR Road, Chennai -3.

6.The Tahsildar,
Purasaiwakkam Perambur Taluk,
Office of Perambur High Road,
Perambur, Chennai – 600 011.

... Respondents

Prayer:

Petition has been filed under Section 227 of the Constitution

of India, to set aside the decretal and fair order dated 02.12.2015 in I.A.No.8846 of 2015 in I.A.4051 of 2015 in I.A.No.13483 of 2014 in O.S.No.923 of 2013, on the file of XI Assistant City Civil Court at Chennai.

For Petitioners : Mr.G.Palani

ORDER

Challenging the impugned order dated 02.12.2015 passed in I.A.No.8846 of 2015 in I.A.4051 of 2015 in I.A.No.13483 of 2014 in O.S.No.923 of 2013, wherein, the prayer for appointment of Commissioner for inspecting the property and finding out the physical features and file a report came to be allowed, this revision has been filed.

2.The learned counsel for the petitioners would submit that the respondents 1 to 3 as plaintiffs filed the suit for declaration that the suit passage is measuring North to South 8 feet and East to West 33 feet, also for a declaration that another passage that is mentioned in ABEF North to South 8 feet and East to West 25 feet and also for consequential injunction directing the defendants 5 to 7 to remove the unlawful encroachment made by the defendants 1 to

4 to the extent of 3 feet in breadth (North to South) and 25 feet in length (East to West) described in the 'C' Schedule of the plaint and marked as B and B1 and F and F1 in the plan filed with the plaint.

3.He would further submit that during the pendency of the suit, the plaintiffs filed I.A.No.13483 of 2014 for appointment of Advocate Commissioner and that application was allowed and an Advocate Commissioner was appointed and she also filed a report and the plaintiffs again filed I.A.No.8846 of 2015 to direct the Advocate Commissioner to measure the length and breadth of the passage described in the 'A' Schedule of the plaint and submit her report and the same was also allowed and a direction to inspect the 'A' Schedule property after giving notice to both parties to measure the length and breadth of the common passage and find out whether any obstruction or construction has been made in the passage and to submit the report with plan was also issued.

4.He would further submit that in I.A.No.8846 of 2015, the plaintiffs/ respondents 1 to 3 has not sought for any remedy to find out whether there is any obstruction or construction has been made in the passage, but the Trial Court without considering the same has

passed an order. Thus, he prayed for setting aside the impugned order passed in I.A.No.8846 of 2015.

5.Heard the learned counsel appearing for the petitioners.

6.Considering the arguments advanced by the learned counsel appearing for the petitioners and also on perusal of the typed set of papers it is known that the respondents 1 to 3 as plaintiffs have filed the suit for declaration that the suit passage is measuring North to South 8 feet and East to West 33 feet, also for a declaration that another passage that is mentioned in ABEF North to South 8 feet and East to West 25 feet and also for consequential injunction directing the defendants 5 to 7 to remove the unlawful encroachment made by the defendants 1 to 4 to the extent of 3 feet in breadth (North to South) and 25 feet in length (East to West) described in the 'C' Schedule of the plaint and marked as B and B1 and F and F1 in the plan filed with the plaint stating that they are the owners of the house and ground and premises bearing new door no.C3, old door no.11/1, 11/2 and 11/3, Second Cross Street, Varadhankuttai, Durga Colony, Kolathur, Chennai – 600 099.

7.It is further stated in the plaint that there was a passage shown as A, B, C, D in the plan attached with the plaint and except this passage, the plaintiffs have no other passage to have entrance from Second Cross Street, Durga Colony extension and the defendants 1 to 4 are attempted to interfere by making come obstruction and construction in the passage mentioned in the 'A' and 'B' Schedule. So, they are constrained to file the suit.

8.During the pendency of the suit, the plaintiffs filed I.A.No.13483 of 2014 for appointment of Advocate Commissioner and that application was allowed and an Advocate Commissioner was appointed and she also filed a report. In the report it is stated that it is a Government Poramboke land mentioned as Varadhan Kuttai and it was not sub-divided.

9.Thereafter, the plaintiffs again filed I.A.No.8846 of 2015 to direct the Advocate Commissioner to measure the length and breadth of the passage described in the 'A' Schedule of the plaint and submit her report. The petitioners herein as respondents filed a detailed counter. But, to find out whether there is a passage as mentioned in 'A' and 'B' Schedule is in existence and whether there

is any obstruction there, the Commissioner warrant has been remitted. Furthermore, it is seen that the Commissioner can be appointed to resort the real problem between both the parties.

10. In paragraph 2 of the counter affidavit, the petitioners herein has stated that it is the respondents 1 to 3 herein who have sought for Advocate Commissioner to measure both the plaintiffs as well as the defendants' property including the common passage through Revenue records along with the Taluk Surveyor. Even there, the contention of the respondents/ revision petitioners is that the common passage is only 5 feet width. In their own document, they have mentioned the passage is only five feet. But, if the Commissioner is there to inspect the property and measure the property and point out the same, whether the width of the passage is five feet or eight feet is to be decided. So for clarification in this Commissioner's report, the Commissioner was directed to inspect the property and measure the property and file a report.

11. Hence, I do not find any reason to interfere with the order passed by the Trial Court in I.A.No.8846 of 2015 and this revision deserves to be dismissed.

12. Accordingly, this Civil Revision Petition is dismissed and the order dated 02.12.2015 made in I.A.No.8846 of 2015 in I.A.No.4051 of 2015 in I.A.No.13483 of 2014 in O.S.No.923 of 2013, by the XI Assistant City Civil Court at Chennai is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

21.01.2016

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Index: Yes/ No
Internet: Yes/ No

To

1. The XI Assistant City Civil Court at Chennai

R.MALA,J.

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