

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2016

CORAM :

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (PD) No. 822 of 2009

and

M.P. No. 1 of 2009

K. Arumugam

... Petitioner/ Defendant

.. Vs ..

Saroja

... Respondent/ Plaintiff

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to aside the fair and decreetal order of the learned District Munsif, Pollachi dated 31.07.2008 in I.A. No. 1177 of 2008 in O.S. No. 455 of 1999 and to order the said I.A as prayed for and pass further orders.

For Petitioner : Mr. T.M. Hariharan

For Respondent : No Appearance

ORDER

The present Civil Revision Petition is filed seeking to

aside the fair and decreetal order of the learned District Munsif, Pollachi dated 31.07.2008 in I.A. No. 1177 of 2008 in O.S. No. 455 of 1999.

2. The plaintiff, aggrieved by the order refusing to re-issue the warrant of the same Commissioner, has preferred the above revision. The suit is for mandatory injunction directing the defendant to remove the unauthorised construction, made in the suit property, which is described in the 'B schedule' in the description of the property or permit the plaintiff to remove the said unauthorised construction and also for permanent injunction restraining the defendant from putting any further constructions.

3. According to the plaintiff, the defendant is the neighbour of the plaintiff, having his property on the eastern side. The plaintiff, at the time of his purchase of the suit property, there was no compound wall on the northern side. However, there was 1½ ft. width passage, left out for easy access, to use the plaintiff's property. In the absence of the plaintiff, the defendant had hurriedly put up a compound wall on the northern side of the property, on the

above said passage, which according to the plaintiff is blocking light and air to the plaintiff's house. Hence, the suit has been filed and a Commissioner was also appointed, to measure the disputed property. As the measurements were not taken correctly and it would not be useful for the purpose of the disposing the suit, the plaintiff has sought for a direction to the Commissioner, to re-visit and take measurement of the property. The said Application was dismissed by the learned District Munsif, Pollachi stating that a Commissioner cannot be appointed for the purpose of gathering evidences.

4. Learned counsel for the petitioner pointed out that in the oral evidence of the defendant, during his cross examination, has admitted that the measurement taken earlier by the Commissioner is not correct and he has also not measured the distance from point 'X' to the store room. She has also categorically admitted that she has no objection to re-appoint the same Commissioner, to measure the distance. The respondent has not also made appearance inspite of service of notice and it is also stated by the learned counsel for the petitioner that the suit has not yet been disposed of, though it is of the year 1999 and it is posted for arguments.

5. In such circumstances, the same Commissioner, who visited the property earlier, may be permitted to re-visit the property for the purpose of measuring and filing a report. The said exercise has to be completed within four weeks from the date of receipt of this order. Thereafter, the learned District Munsif, Pollachi is directed to complete the trial, on or before 30.04.2016 and report compliance before this Court.

6. Accordingly, the Civil Revision Petition is allowed. Consequently, the connected M.P is closed. No costs.

22.02.2016

Index: Yes/No.
Internet: Yes/No.
avr

To
The District Munsif,
Pollachi.

PUSHPA SATHYANARAYANA J.,

avr

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