

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2016

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)No.475 of 2012

and

M.P.No.1 of 2012

Gandhi

... Petitioner

Vs.

1.S.R.Elango

2.Natrajan

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and Decreetal order passed by the learned Principal District Munsif-cum-Judicial Magistrate No.I, Cheyyar in I.A.No.523 of 2011 in O.S.No.173 of 2007, dated 15.11.2011 and prays this Court to set aside the same.

For Petitioner : Mr.K.G.Senthilkumar

For Respondents : Mr.P.Mani (for R1)

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order and decreetal order passed by the learned Principal District Munsif-cum-Judicial Magistrate No.1, Cheyyar in I.A.No.523 of 2011 in O.S.No.173 of 2007 dated 15.11.2011 and allow the revision.

2.The 1st defendant in the suit is the revision petitioner. The 1st respondent herein as plaintiff filed a suit in O.S.No.173 of 2007 against the revision petitioner and 2nd respondent herein for declaration, mandatory injunction to demolish the building and to surrender possession and also for permanent injunction not to put up any construction in the suit property. The 1st respondent herein took out an application in I.A.No.523 of 2011 for appointment of an Advocate Commissioner to measure the suit property with the help of Surveyor.

3.The reason for appointment of Advocate Commissioner stated by the 1st respondent herein is that the revision petitioner encroached into the suit property and put up construction therein. Therefore, in order to ascertain the construction made in the suit property by the revision petitioner an Advocate Commissioner is necessary to inspect

the suit property and to measure the same with the help of the surveyor.

4.Per contra, the revision petitioner resisted the said application stating that his father purchased the property under a registered sale deed dated 27.09.1985 and thereafter on 12.06.1986 obtained plan approval from Cheyyar Municipality and constructed a building. The revision petitioner had put up construction in his property and he has not encroached upon the suit property. Therefore, the revision petitioner prayed the Court below to dismiss the commission application.

5.Upon considering the rival submission on either side the trial by order dated 15.07.2011 appointed an Advocate Commissioner to inspect the suit property and to measure the same with the help of surveyor and directed the commissioner to file a report along with plan and surveyor sketch. Aggrieved over the same the present Civil Revision Petition is filed by the 1st defendant / revision petitioner.

6.I heard Mr.K.G.Senthilkumar, learned counsel appearing for the petitioner and Mr.P.Mani, learned counsel appearing for the 1st

respondent and perused the entire material available on records.

7. This Court has carefully gone through the entire records. The case of the plaintiff/1st respondent is that the 1st defendant by encroaching the suit property had put up construction. Whereas, the same was denied by the defendants and the 1st defendant contended that the house constructed is on the property purchased by his father and not in the suit property. The trial Court after considering the fact and in order to ascertain whether the 1st defendant constructed a house in the suit property or not, could be found out only by appointing an Advocate Commissioner and hence appointed advocate commissioner to measure the suit property, that will help the Court to find out the case of the parties and also Advocate Commissioner's report would reduce the time of the Court for arriving at a correct conclusion. The said finding of the Court below, in my considered opinion does not call for any interference and the same is liable to be confirmed.

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8. Regarding Advocate Commissioner appointment, I have rendered a judgment reported in 2017 (2) CTC 353 wherein I have held that "A picture is worth a thousand words". I have further held in

the said Judgment that the best evidence could be obtained only by the appointment of advocate commissioner.

9. In view of the foregoing reason, I do not find any merit in this Civil Revision Petition and the same is liable to be dismissed. Accordingly it is dismissed.

10. In the result:

(a) this Civil Revision Petition is dismissed by confirming the order and decree made in I.A.No.523 of 2011 in O.S.No.173 of 2007, dated 15.11.2011, on the file of the learned Principal District Munsif-cum-Judicial Magistrate No.I, Cheyyar;

(b) the learned Principal District Munsif-cum-Judicial Magistrate No.I, Cheyyar, is hereby directed to issue suitable direction to the Advocate Commissioner within a period of one week from the date of receipt of a copy of this order to inspect and file a report within a period of one month from the date of issuance of the direction;

(c) after filing the report by the Advocate Commissioner, the learned Judge is directed to take up the suit without giving any adjournments to either parties and

dispose the same based on the Advocate Commissioner report within a period of three months and both the parties are hereby directed to co-operate for early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

22.12.2016

Note: Issue order copy on 16.11.2017.

vs

Internet: Yes/No

Index: Yes/No

To

The Principal District Munsif-cum-
Judicial Magistrate No.I, Cheyyar.



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M.V.MURALIDARAN,J.

VS



**Pre-delivery order made in
CRP(PD)No.475 of 2012
and
M.P.No.1 of 2012**

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