

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.06.2017**

CORAM:

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

C.R.P.(P.D.) No. 3454 of 2013 and
MP.No.1 of 2013

Nallasamy

...Petitioner

Vs

Nirmala

...Respondent

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India against the fair and final order of the Principal District Munsif Court, Mayiladuthurai dated 29.07.2013 made in I.A.No.286 of 2013 in O.S.No.263 of 2011.

For Petitioner : Mr.S.Sounthar

For Respondent : Mrs.Srividhya

ORDER

The petitioner, in a suit for injunction, filed an application for appointment of Advocate Commissioner. The Commissioner so appointed submitted his report. Thereafter, the petitioner filed application in I.A.No.286 of 2013 to direct the Surveyor to inspect the property and submit a report. The application was dismissed by the learned trial Judge on the ground that the matter requires evidence and not inspection by the Advocate Commissioner. The order is under challenge in this civil revision petition.

2. The learned counsel for the petitioner contended that there is a

bona fide dispute with regard to the southern boundary wall of the plaint scheduled property and it was only for the purpose of locating the said wall, request was made to depute the Surveyor.

3. The learned counsel for the respondent on the other hand contended that the respondent made it very clear that the compound wall was constructed by her leaving enough place from the boundary of the petitioner and as such, there is no need for appointing Surveyor to inspect the property.

4. The petitioner claims that there was an attempt to trespass into the southern boundary of his property. The petitioner therefore, seeks inspection of the property. The Commissioner appears to have submitted his report. The petitioner filed the interlocutory application with a grievance that the location of the compound wall was not described in the report submitted by the Advocate Commissioner. The learned trial Judge was of the view that the matter requires evidence and the same cannot be decided on the basis of the Surveyor's Report.

5. After hearing the learned counsel for the parties and on a perusal of the order impugned in this civil revision petition, I am of the view that interest of justice would be subserved by directing the learned trial Judge to consider

the application afresh after closure of evidence.

6. In the result, the order dated 29 July 2013 is set aside. The application in I.A.No.286 of 2013 is restored to file.

7. The learned Principal District Munsif, Mayiladuthurai is directed to consider the application afresh, after the closure of the evidence. The question of appointment would arise only if the Court is of the view that in spite of the evidence adduced by the parties, still there is a doubt with regard to the location of the southern boundary of the plaint scheduled property.

The civil revision petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed. No costs. Consequently, connected miscellaneous petition is closed.

22.06.2017

gms

To

The Principal District Munsif Court,
Mayiladuthurai.

K.K.SASIDHARAN,J.

gms

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