



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) No.1549 of 2018 (PD)

and

C.M.P. (MD) .No.6786 of 2018

Jawahar Noohu .. Petitioner/ Petitioner/Plaintiff
vs.

Augustin .. Respondent/ Respondent/ Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 20.02.2017 passed in I.A.No.495 of 2016 in O.S.No.136 of 2015 on the file of the I-Additional District Munsif, Tirunelveli.

For Petitioner : Mr.M.P.Senthil

For Respondent : No appearance

ORDER

The plaintiff in O.S.No.136 of 2015 on the file of the I-Additional District Munsif, Tirunelveli is the revision petitioner herein. He filed I.A.No.495 of 2016 seeking appointment of an Advocate Commissioner. The said IA was dismissed by order, dated 20.02.2017. The correctness of the said order is questioned in this civil revision petition.

2. Though the defendant is served and his name is printed in the cause list, he has not chosen to enter appearance either in person or through counsel.

3. As the learned counsel appearing for the plaintiff rightly pointed out, the case of the plaintiff is that the suit wall is common wall and that the defendant has unlawfully raised its height. In the written statement, the defendant has specifically denied that he has put up any kind of construction. In this case, the plaintiff has asked not only for a decree of permanent injunction but also a decree of mandatory injunction. Since the defendant has denied the allegation of the plaintiff that he has put up construction, in the very nature of things, report of the advocate commissioner is required. But, the Court



below is erred in dismissing the I.A.No.495 of 2016. In this view of the matter, the order impugned in this petition is set aside. The Civil Revision Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(crl side)

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/True Copy/

Sub Assistant Registrar(CS-II)

To

- 1.The I-Additional District Munsif,
Tirunelveli.
2. The Section Officer(2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.P.Senthil, Advocate Sr.No.79343

PJL

VB/SV/SAR2/20.09.2018/2P/5C

**C.R.P. (MD) No.1549 of 2018 (PD)
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