



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2018

WEB COPY

CORAM

THE HONOURABLE MR. JUSTICE **G.R.SWAMINATHAN**

C.R.P(MD) (PD) .No.1375 of 2018

and

C.M.P(MD) .No.5939 of 2018

T.Kodivel

... Petitioner/Petitioner

vs.

1.Alaguraththi

2.Dhanesh

...Respondents/Respondents

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the order dated 20.10.2017 made in I.A.No.419 of 2017 in O.S.No.197 of 2016 on the file of the District Munsif Court, Srivaikuntam.

For Petitioner

: Mr.S.Sivathilagar for

Mr.George Stephen kannikkai

For Respondents

: Mr.M.P.Senthil

O R D E R

The plaintiff in O.S.No.197 of 2016 on the file of the District Munsif Court, Srivaikundam, is the revision petitioner. It is a suit for declaration and mandatory injunction. In the said suit, the plaintiff filed I.A.No.419 of 2017 for appointment of Advocate Commissioner. The Court below, by the order impugned in this civil revision petition, dismissed the said Interlocutory Application. Questioning the same, this Civil Revision Petition has been filed.

2.Heard the learned counsel on either side.

3.The Court below has noted that the plaintiff has not given the extent of encroachment alleged to have been made by the defendants. Since no measurements have been put forth, the Court below has chosen to dismiss the Interlocutory Application. I went through the contents of the written statement. The case of the plaintiff is that on the South-North compound wall of his property,



the defendants have committed encroachment by putting up further construction, which is controverted by the defendants in paragraph No.4 of their written statement. The defendants would admit that there is a compound wall running South-North and that it is very old. According to the defendants, the said compound wall lies within their property and that it belongs to them. It is further stated that no construction has been erected on the said compound wall, as it would collapse, if so erected.

4. However, the case of the plaintiff is that this compound wall belongs to him and it is North-South compound. Since there is a dispute between the parties in this regard, the Court below is directed to appoint an Advocate Commissioner to inspect the suit property and file a report by noting the physical features, in particular, if any construction has been made on the old compound wall ie., running South-North.

5. In this view of the matter, the order impugned in this Civil Revision Petition is set aside and the Civil Revision Petition is allowed on these terms. This Court has itself clarified the scope of the warrant to be issued to the Advocate Commissioner. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar (CS-I)

To

1. The District Munsif Court, Srivaikuntam.

+1 CC To MR.S.SIVA THILAKAR, Advocate SR. NO.88718

+1 CC To MR.M.P.SENTHIL, Advocate SR. NO. 88788

C.R.P (MD) (PD) .No.1375 of 2018

04.10.2018

RMK

TR/SV/SAR-I (12.11.2018) 2P 4C