

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.847 of 2010
and M.P.No.1 of 2010

- 1.Usha Ramasamy
- 2.Rita V.Rajan
- 3.Hanuman
- 4.B.Anil Kumar
- 5.T.S.Muthukumar

... Petitioners

Vs.

- 1.Rajendran
- 2.Sri Sakthi Apartments Owners Association,
rep by its Secretary,
Door No.29, 4th Cross Street,
Dhandeeswaram Nagar,
Velachery, Chennai - 600 042.
- 3.Lakshmipriya Apartments Owners Association,
rep by its Secretary,
No.12, 3rd Cross Street,
Dhandeeswaram Nagar,
Velachery, Chennai - 600 042.
- 4.Meenakshi
- 5.Corporation of Chennai,
rep by the Commissioner,
Rippon Building,
Chennai - 600 003.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order of the XVIII Assistant City Civil Judge, Chennai dated 05.01.2010 in I.A.No.1282 of 2009 in O.S.No.645 of 2008.

For Petitioners : Mr.P.Valliappan

For Respondents : Ms.Aiswarya S.Nathan
for Mr.Srinath Sridevan (R3)
R5 - no appearance
R1, R2 & R4 - given up

ORDER

Challenging the fair and final order passed in I.A.No.1282 of 2009 in O.S.No.645 of 2008 on the file of the 18th Assistant Judge, City Civil Court, Chennai, the plaintiffs have filed the above Civil Revision Petition.

2.The plaintiffs filed the suit in O.S.No.645 of 2008 for mandatory injunction directing the defendants 1 to 4 to remove their unauthorized encroachment into the 30 feet road in the 4th Cross Street, Dandeewaran Nagar, Velachery, Chennai and for permanent injunction restraining them from putting up any construction in the encroached land. The defendants filed their written statement and are contesting the suit.

3.It is the case of the plaintiffs that the defendants 1 to 4 have unauthorizedly put up construction by encroaching the 30 feet road. In these circumstances, the plaintiffs filed an application in I.A.No.1282 of

2009 seeking for appointment of an Advocate Commissioner along with a Junior Engineer to note down the physical features. In the said application, the plaintiffs have made the Commissioner, Corporation of Chennai as the 5th respondent, though the Commissioner was not made as a defendant in the suit. When the plaintiffs alleged that the defendants 1 to 4 have encroached the road and put up construction unauthorizedly, they should have made the Corporation as a defendant in the suit. Only the Commissioner, Corporation of Chennai can say whether the defendants 1 to 4 have encroached the road or not.

4.Mr.P.Valliappan, the learned counsel appearing for the petitioners submitted that since this Court has granted an order of interim stay in the year 2010, the plaintiffs could not file an application for impleading the Commissioner, Corporation of Chennai as a defendant in the suit. Further, the learned counsel submitted that the plaintiffs would file the application for impleading the Commissioner, Corporation of Chennai as a defendant in the suit immediately after the disposal of this Civil Revision Petition.

5.The application filed by the plaintiffs seeking for appointment of Advocate Commissioner was opposed by the defendants 1 to 4 stating that without impleading the Corporation of Chennai as a defendant in the suit,

the plaintiffs cannot make the Corporation of Chennai as a respondent in the application. Further, the defendants 1 to 4 have stated that even in the absence of a Junior Engineer, the Advocate Commissioner can note down the physical features and there is no necessity for appointing a Junior Engineer for noting down the physical features.

6.The trial Court, taking into consideration the case of both parties, dismissed the application finding that the plaintiffs should prove their case only by oral and documentary evidences and not through Advocate Commissioner. Further, the trial Court observed that without impleading the Commissioner, Corporation of Chennai as a defendant in the suit, the plaintiffs cannot make him as a respondent in the application.

7.As already stated, since the plaintiffs alleged that the defendants 1 to 4 have encroached the road, the proper party to speak about the alleged encroachment is the Commissioner, Corporation of Chennai. Even if an Advocate Commissioner is appointed to note down the physical features, he cannot give a finding as to whether the defendants have encroached the road portion or not. In these circumstances, I am of the view that the Commissioner, Corporation of Chennai is a proper and necessary party to the suit for proper adjudication of the matter.

8.Since the learned counsel for the petitioners submitted that the plaintiffs would file an application seeking for impleadment of the Commissioner, Corporation of Chennai, that would resolve the dispute between the parties. In case of any ambiguity in the stand taken by the Corporation of Chennai, in that case, the plaintiffs can seek for appointment of an Advocate Commissioner. In such view of the matter, I make it clear that it is open to the petitioners to file an application to implead the Commissioner, Corporation of Chennai, who is the 5th respondent in this Civil Revision Petition, as a defendant in the suit and in case of any ambiguity or lack of clarity in the stand taken by the Commissioner, Corporation of Chennai, in such a case, the plaintiffs can seek for appointment of Advocate Commissioner and if such an application is filed by the plaintiffs, the trial Court shall decide the same, on merits and in accordance with law, after giving an opportunity of hearing to the defendants 1 to 4 and also the Corporation of Chennai.

9.With these observations, the Civil Revision Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

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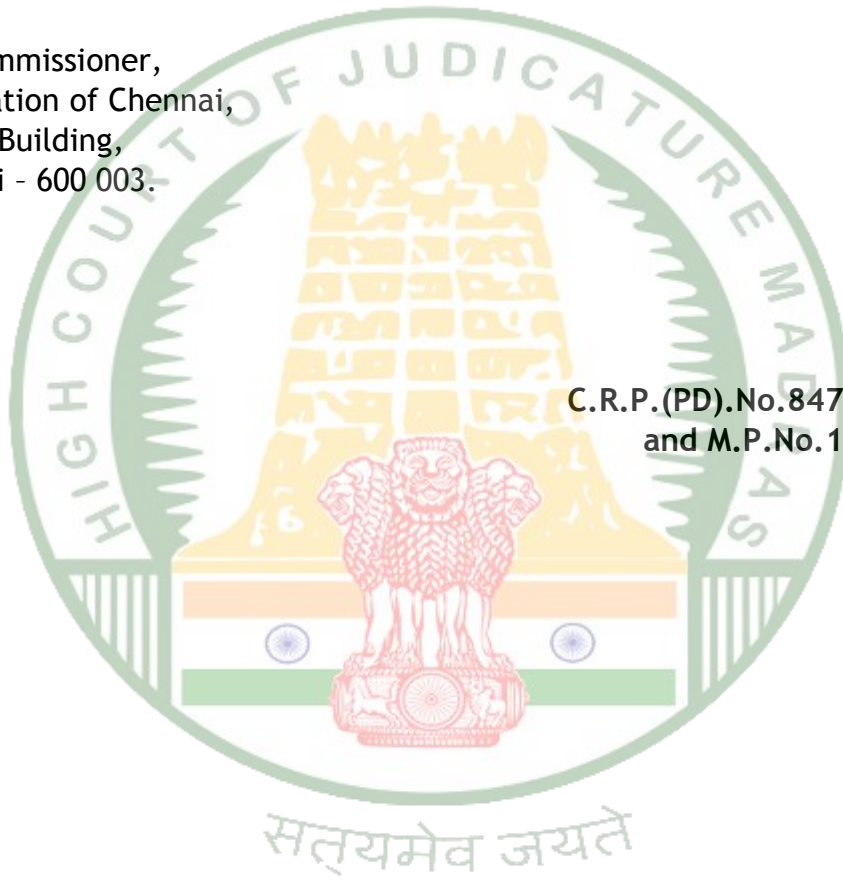
M.DURAIWAMY,J.

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To

1.The 18th Assistant Judge,
City Civil Court, Chennai.

2.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai - 600 003.



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