

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2019

CORAM :

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR

C.R.P. (PD) No.4461 of 2013

and

M.P.No.1 of 2013

J.Muthu Krishnan

... Revision Petitioner

Vs.

1.Kokila

2.Sathish Kumar

3.Chandru

4.Sharmila

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.25 of 2013 in O.S.No.53 of 2011 on the file of the Principal District Munsif Court, Alandur, dated 06.08.2013 by allowing this Civil Revision Petition.

For Petitioner : Mr.B.Vijay

For Respondents : M/s.Span Associates

ORDER

This Civil Revision Petition is filed against the order of the Principal District Munsif, Alandur, made in I.A.No.25 of 2013 in O.S.No.53 of 2011, appointing an Advocate Commissioner to note down the physical features of

the suit property, such as, the entrance of the A-Schedule property and the passage available for the plaintiff for the A-Schedule property on the northern side to reach West Mada Street and the compound wall, he had constructed on the southern side of the A-Schedule property, particularly to note down the description of the B-Schedule property with the condition of the superstructure built on defendant's property and its appearance and age, along with the linear measurements of both the defendants' and the plaintiff's property based on the revenue records, with the assistance of the Taluk Surveyor.

2.The suit was originally laid for a declaration that the 'B' schedule property is the common passage of the plaintiff. It is the contention of the plaintiff in the suit that, he had purchased the 'A' Schedule property with the passage on its southern side, measuring 10 feet width and 180 feet length to have access to the 'A' Schedule property from eastern side West Mada Street. The said common passage is described as 'B' Schedule property. It is also alleged in the plaint that the defendants have encroached a portion of the 'B' Schedule property and hence, the suit. Along with the plaint, a plaint plan is also attached.

3.In the written statement, in Para No.3, it is the case of the defendants that the southern side of the plaintiff's property is the 'B' Schedule

property and they have also admitted the boundaries set out in the plaint. In Para No.5, it is the specific contention of the defendants that the 'B' Schedule property is the ancestral property and in Para No.6, it is stated that, it is only a private passage and no right whatsoever is conferred on the plaintiff. From the defence set up by the defendants, it is clear that, there is no dispute with regard to the existence and identity of the property. At this stage, the defendants have filed the application to appoint an Advocate Commissioner to note down the physical features as cited *supra*.

4.The learned counsel for the revision petitioner/plaintiff would contend that, when there is no dispute with regard to the identity of the property, the Advocate Commissioner cannot be appointed to gather evidence, which would be totally irrelevant to the lis between the parties. Hence, the learned counsel contended that the order of the trial Court, appointing an Advocate Commissioner, is liable to be set aside.

5.The learned counsel for the respondents/defendants would contend that the Advocate Commissioner has already filed a report and no prejudice would be caused to the plaintiffs and hence, prayed for dismissal of the revision.

6.As narrated above, the suit is filed for limited prayer with respect to the 'B' Schedule property, which is said to be a common passage. The plaint plan indicates that the pathway is situated in the southern side of the plaintiff's property and in the written statement, as stated above, there is no dispute with regard to the identity of the property. The defence of the defendants is only with regard to the right over the passage. At one place, it is claimed that the passage absolutely belongs to the defendants, being their ancestral property and it is further claimed that they alone have the right of usage over such passage and the plaintiff has no right over the above passage.

7.That being the position, when there is no dispute with regard to the existence or identity of the property, appointment of an Advocate Commissioner to note down the physical features in the 'A' Schedule property and other compound walls in 'A' Schedule property is no way relevant to the suit. The issue between the parties is very narrow on the basis of their pleadings. Whether the plaintiff is entitled to use the passage absolutely or the pathway absolutely belongs to the defendants is a matter of evidence, which has to be tested before the trial Court by adducing proper evidence.

8.Therefore, I am of the view that, either the appointment of Advocate Commissioner to note down the physical features, or a report of such

Commissioner in respect of this matter, is no way relevant to the issue between the parties and the same is not at all required. Accordingly, the order of the Principal District Munsif, Alandur, made in I.A.No.25 of 2013 in O.S.No.53 of 2011 is hereby set aside and the report of the Advocate Commissioner, if any filed, stands scrapped.

9.In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

10.The trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order.

07.03.2019

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Index : Yes / No

Internet : Yes / No

Speaking order / Nonspeaking order

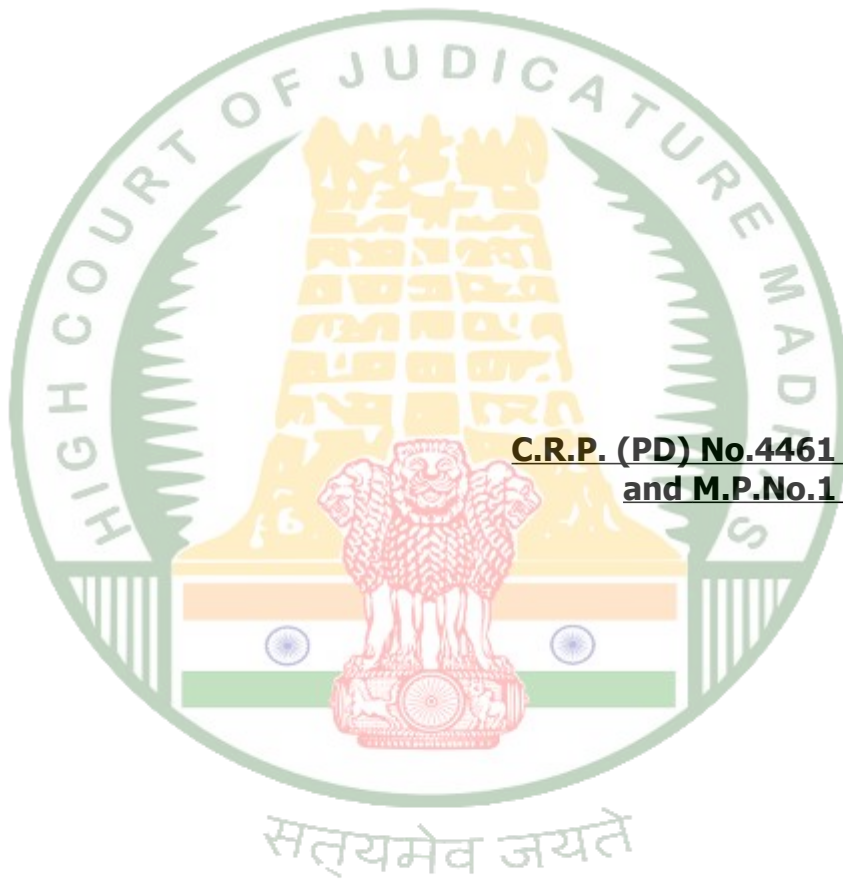
To

The Principal District Munsif,
Alandur.

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N. SATHISH KUMAR, J.

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