

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2019

CORAM

THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.No.1570 of 2019

and

C.M.P.No. 10250 of 2019

J.Malini

..Petitioner/Plaintiff

Vs.

1.J.Anandan

2.Hemamalini

..Respondents/Defendants

This Civil Revision Petition is filed under Article 227 of the Constitution of India to direct the V Additional City Civil Court, Madras, to entertain the application filed by the petitioner in C.M.P.Sr.No. 14947 of 2019 filed under Order XXVI Rule 9 CPC in C.M.A.No.63 of 2018, on the file of the V Additional City Civil Court, Madras, deal with the same in the manner known to law.

For Petitioner : Mr.B.Harikrishnan

ORDER

The above Civil Revision Petition is filed challenging the following order/return passed by the learned V Additional Judge, City Civil Court, Chennai.

"The matter in dispute is clear from the mutual allegations of the parties. No further elucidation is required by this Court. The appointment of Advocate Commissioner before the Appellate Court in the Civil Miscellaneous Appeal is a wasteful exercise at this stage. Hence, the petition is returned for presentation before the Trial Court at appropriate

stage of the case."

2 The plaintiff is the revision petitioner, the revision petitioner had filed suit O.S.No. 1903 of 2018, on the file of the learned XV Assistant City City Court, for the following reliefs:

"Permanent Injunction restraining the Defendants from in any manner blocking or preventing the plaintiff from having access (both ingress and egress) to her property situated in the rear side of the property bearing Door no.5, Vinayagar Koil Street, Velchery Road, Saidpet, Chennai-600015, set out in Schedule B hereunder, through the common passage measuring 3 feet in width, situated on the southern side, leading from Vinayagar Koil Street, set out in Schedule C hereunder and delineated and marked red in the plan appended thereto, either by using it as a kitchen or by any other means;"

3 The plaintiff has come forward with the specific case that the ingress and egress in the common passage has been deliberately blocked by the defendants by carrying cooking activity in the said premises viz; the 'C' schedule property. The application in I.A.No.5064 of 2018 was filed seeking an ad-interim injunction. Originally an ad-interim injunction was granted by the learned Judge, taking into consideration, the *prima facie* case, that has been put forward by the revision petitioner/Plaintiff. Thereafter, on contest,

the interim order came to be vacated and ultimately, the application was dismissed. The learned XV Assistant City Civil Judge has dismissed the application by observing as following:

"The petitioner/plaintiff had contended that common passage is of 3 feet width situates on the southern side. But, the rough sketch filed along with the plaint would show that the common passage is more than 3 feet and that the petitioner/plaintiff had stated in the rough sketch that encroached area in the southern side of the common passage is 5.8 feet and that already vessel washing room, bathroom, kitchen and motor room were situated on the southern side of the 3 feet common passage from the Vinayagar Koil Street to the end. The rough sketch would shows that the vacant land of the 1st respondent/1st defendant situates very next to the common passage and that there is no structure for showing the separation of 1st respondent/1st defendant's vacant land and the 3 feet common passage.

Only after the completion of trial, it could be came to light as to what extent permanent structures were constructed in the suit 'C' schedule property."

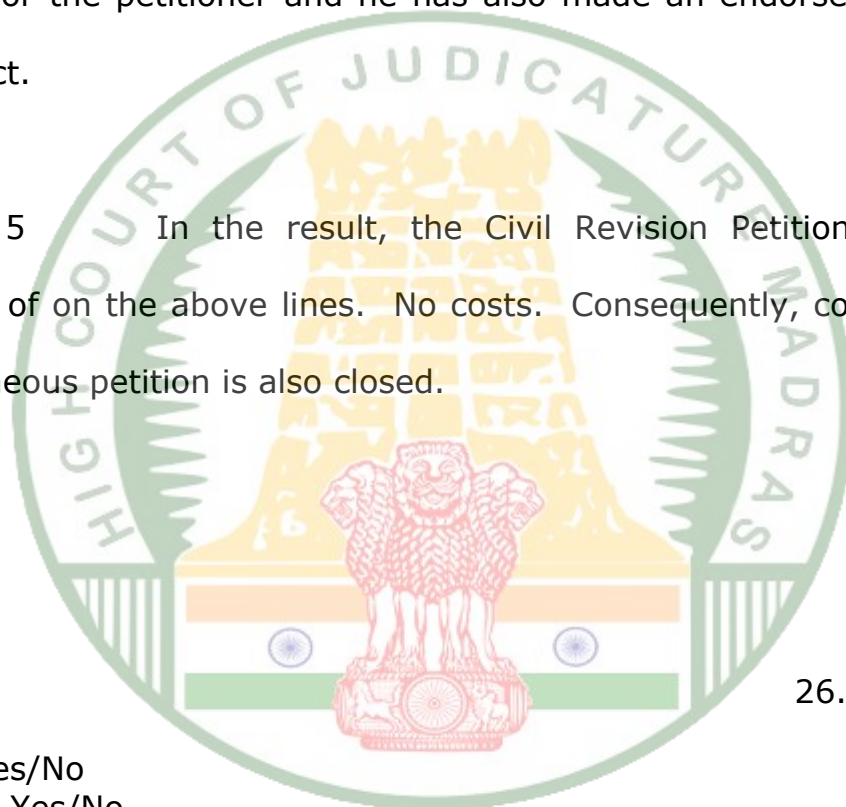
and ultimately, the learned Judge has held that only after the completion of trial the extent of permanent structure put up can be taken note of. The interlocutory application, that was moved by the revision petitioner/plaintiff was for an injunction restraining the defendant/respondent from obstructing her ingress and egress

through the 3 feet wide common passage that has been described as a "C" schedule property. Challenging the order of dismissal in I.A.No.5064 of 2018, revision petitioner has filed C.M.A.No. 63 of 2018 and in the said application, they have moved the application for interim injunction in CMA.No.1009 of 2018 and simultaneously taken out this unnumbered application, which is the subject matter of the revision, for appointing of the Advocate Commissioner to note down the physical features of the property. The specific stand that has been taken by the revision petitioner is that the 3 feet wide common passage has been used as cooking area, which would ultimately result in ingress and egress being blocked. The learned Judge ought to have been numbered the application since in the considered opinion of this Court, the appointment of an Advocate Commissioner to note physical features would by and large reduce the evidence that would have to be let in the suit. The defendant have talked about a permanent structure in the larger area of the passage, whereas, the revision petitioner would seek for an assessment of the obstructed area through the 3 feet wide common passage, in which, the defendants were running a hostel and converted the same into a temporary Ritchen and hence it is only Advocate Commissioner who can inspect property and come forward with the details of usage of the 'C' schedule property. This being case, the order/return made by the learned V Additional Judge is totally unwarranted, the learned

Judge is directed to number the application and pass order after hearing both parties.

4 Impugned order is handed over to the learned counsel for the petitioner and he has also made an endorsement to that effect.

5 In the result, the Civil Revision Petition stands disposed of on the above lines. No costs. Consequently, connected miscellaneous petition is also closed.



26.04.2019

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Index: Yes/No

Internet: Yes/No

Speaking order / Non-speaking order

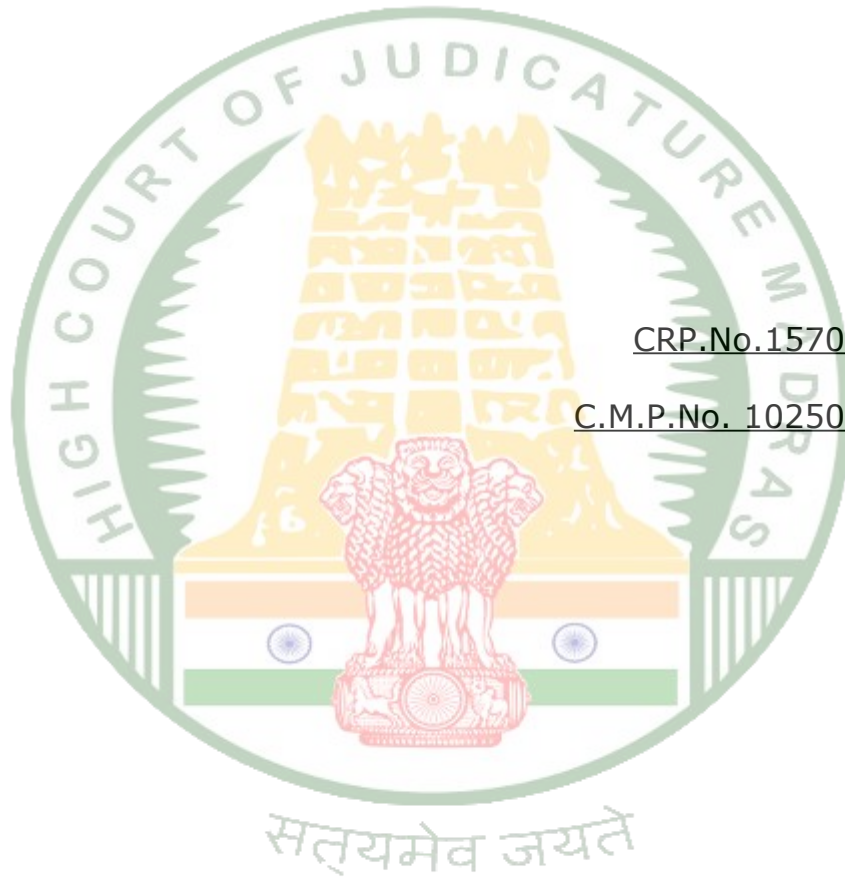
Note: Issue order copy on 26.04.2019

To

The V Additional City Civil Court,
Madras.

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P.T.ASHA, J.
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