

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2020

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THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRP.No. 4085 of 2010

J.Suresh

..Petitioner

Vs

S.Vadivambal

..Respondent

Prayer : Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the decreetal order in I.A.No.14081 of 2010 in O.S.No.7200 of 2009 on the file of VI Assistant City Civil Court, Chennai and to direct the Lower Court to appoint an Advocate Commissioner as prayed in the above Petition.

For Petitioners : M/s.C.Shankar

For Respondents : No Appearance

ORDER

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The Civil Revision Petition is filed to set aside the decreetal order in I.A.No.14081 of 2010 in O.S.No.7200 of 2009 on the file of VI Assistant

City Civil Court, Chennai.

2. The case of the petitioner is that the petitioner has filed a suit in O.S.No. 7200 of 2009 against the respondent herein on the file of the City Civil Court for Mandatory Injunction and also for Permanent Injunction restraining the defendant, her family members, her men, agent, representatives etc, from interfering with the peaceful enjoyment of the suit mentioned property. The respondent entered appearance through her counsel and filed written statement. After framing issues and commencement of trial, the said suit was listed for arguments. At this stage, the petitioner has filed an application in I.A.No. 14081/2010 to appoint Advocate Commissioner to measure the suit mentioned property. The said application was dismissed by the trial Court. Challenging the same, the present revision is filed.

3. The learned counsel for the petitioner submitted that since the respondent had encroached the public road and put up construction, the petitioner had filed a suit to remove the encroachment portion. The learned counsel for the petitioner further submitted that during trial, the respondent

has stated that she does not have knowledge about the extent of her building constructed in the suit property. Hence, it is necessary to appoint an advocate commissioner to inspect the suit property and to submit a detailed report. Therefore, the dismissal of the application filed by the petitioner seeking appointment advocate commissioner is erroneous and liable to be set aside.

4. Heard the learned counsel for the petitioner. Though notice was served and the name was also printed in the cause list, none appeared on behalf of the respondents. Perused the documents available on record.

5. Admittedly, the Suit in O.S.No. 7200 of 2009 on the file of VI Assistant City Court was filed by the petitioner against the respondent for mandatory injunction and also for permanent injunction. Subsequently, he filed an application in I.A.No. 14081 of 2010 to appoint advocate Commissioner to measure the suit mentioned property and the same was dismissed by the Court below. It is seen from the records that in the said suit, evidence of both sides were completed and now the suit is posted for

arguments. At this stage, by taking advantage of the statement made by the respondent at the time of trial that she does not know the extent of his building, the petitioner has filed the said application, which is not acceptable. Further, if the respondent is really aggrieved, he should have file the said application either at the time of filing the suit or before commencement of trial. Without doing so, the respondent has filed the application at the stage of arguments. Further, it is for the respondent to prove his case by way of oral and documentary evidence. The commissioner cannot be appointed to collect the evidence. The Court below has also rightly considered the above facts and dismissed the application filed by the respondent. This Court finds no perversity or illegality in the order passed by the trial Court.

6. Accordingly, the Civil Revision Petition stands dismissed. No costs.

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Index : Yes/No

Internet : yes

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To
The VI Assistant Judge,
City Civil Court,
Chennai.

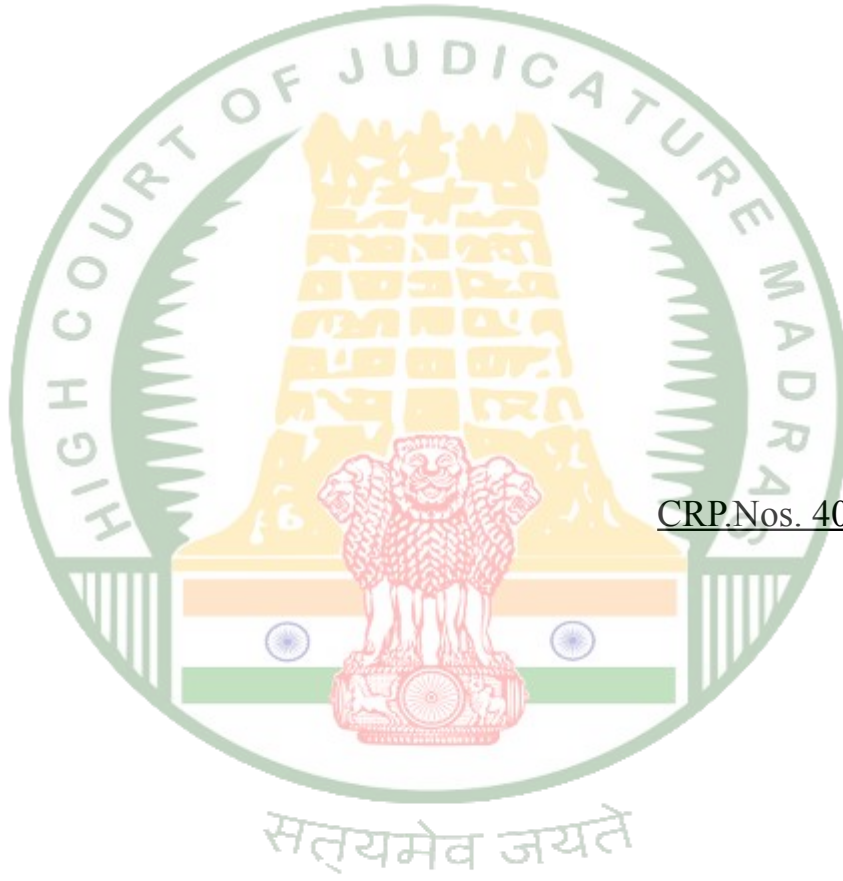


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