

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.10.2020

PRONOUNCED ON : 18.01.2021

CORAM

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN**

CRP(PD).No.609 of 2019

1. R.Mahalakshmi
2. R.T.Sundari
3. R.Shanthi
4. R.Nandhini
5. R.Chitra

... Petitioners

Versus

1. R.Vajiravelu
2. V.Brindha
3. V.Jagan Mohan
4. J.Abhinaya

... Respondents

**PRAYER:** This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to allow the CRP setting aside the order passed in I.A.No.189 of 2018 in O.S.No.33 of 2018 dated 03.11.2018 on the file of the Principal District Munsif at Alandur, and grant such other relief under the circumstances of the case.

For Petitioners : Mr.P.T.Sundaripugazhenth

For Respondents : Mr.Selvi George

For R1 to R4.

**ORDER**

The plaintiff in the suit is the Revision Petitioner herein. The petitioner/plaintiff filed a suit in O.S.No. 33 of 2018, for the relief of declaration, declaring that the plaintiffs have got right to hold possession and enjoyment of the property in 'C' Schedule adjunct to 'B' Schedule and also the easementry right. The defendant has filed a written statement, wherein, they disputed the title. Pending trial, the plaintiff filed the above I.A.No.189 of 2018 for appointment of an Advocate Commissioner to note down the physical features of the suit property and the same was rejected and hence, the Civil Revision Petition.

2. Heard Ms.P.T.Sundari Pugazhendhi, learned counsel for the petitioner and Ms.Selvi George, learned counsel for the respondent.

3. The suit was filed for the relief of declaration of easementry right and for permanent injunction against the defendant and the suit is pending for trial. The suit property is situated in S.No.33/4, Village No.124, Pazhavanthangal Village measuring to an extent of 3608 Sq.ft. According to the respondent/defendant, it is the absolute property of the father of the defendant, namely, one Mr.R.Vajravelu. According to the

plaintiff, who is the widow of the first son of the said Vajravelu, the plaintiff averments are to the effect that 'C' schedule property measuring an extent of 270 Sq.ft., was obstructing the 'B' Schedule property, wherein septic tank, sewerage pump, water pump etc., of the petitioner are lying. Plaintiff's family was residing in the property for several number of years. To note down the physical features existing in 'C' Schedule property, they have filed the application.

4. The 'C' Schedule property was said to have been used in common by utilising the drainage and metro water facility with the knowledge of the defendants for more than the statutory period and an alternative drainage is available for human necessity. It is the specific plea in the plaint that septic tank, metro water pipe line, sewerage pipeline run through the 'C' Schedule property and hence, to note down the physical features, appointment of Advocate Commissioner is necessary. The factum that is sought to be addressed through the Advocate Commissioner is whether there was any structure namely sewerage pipeline and septic tank and the same cannot be addressed on evidence. Since, it is only noting down of physical features, I find that the report of

**RMT.TEEKAA RAMAN, J.**

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the Advocate Commissioner is necessary to arrive at a conclusion to the  
lis between the parties.

5. In view of this matter, this Civil Revision petition is allowed.  
The order in I.A.No.189 of 2018 dated 03.11.2018 is set aside on the file  
of Principle District Munsif, Alandur and the trial Court is directed to  
appoint an Advocate Commissioner and such Advocate Commissioner  
shall inspect the suit property and file a report within a period of 8 weeks  
and complete the trial of the suit within a period of 4 months thereafter.

18.01.2021

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Speaking Order: Yes/No

To

The Principal District Munsif at Alandur.

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