

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.2506 of 2016

and

C.M.P.No.12941 of 2016

1.Paramasivam (died)

2.P.Gunasundari

3.Banupriya

4.Ramani Priya

5.Maheswari

6.Girija

.. Petitioners

(Petitioners 3 to 6 brought on record as LR's of the deceased 1st petitioner viz., Paramasivam, vide order of this Court dated 25.08.2021 in C.M.P.No. 12871 of 2021 in C.R.P.No.2506 of 2016)

Vs.

Indirani

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 13.04.2016 made in I.A.No.276 of 2014 in O.S.No.360 of 2012 on the file of the Principal District Munsif Court, Villupuram.

For Petitioners : Mr.S.Krishnasamy

For Respondent : Mr.M.Manohar
for Mr.R.Balakrishnan

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed against the fair and decretal order dated 13.04.2016 made in I.A.No.276 of 2014 in O.S.No.360 of 2012 on the file of the Principal District Munsif Court, Villupuram.

2.The petitioners 1 & 2 are the defendants in O.S.No.360 of 2012 on the file of the Principal District Munsif Court, Villupuram. The respondent filed the said suit for declaration that 'C' schedule property which is part of 'A' schedule property is absolute property of the respondent and for mandatory injunction to remove the construction in the encroached portion in the 'C' schedule property. The petitioners 1 & 2 filed written statement and are contesting the suit.

3.The respondent filed I.A.No.276 of 2014 under Order XXVI Rule 9 C.P.C. for appointment of Advocate Commissioner to inspect and measure

the suit property along with Surveyor and file report with plan. According to respondent, she filed suit for declaration and mandatory injunction that petitioners have encroached two cents of 'C' schedule property belonging to respondent and for removing the said construction, she has filed the said suit. The respondent also filed I.A.No.1187 of 2012 for interim injunction. In the said I.A., initially the learned Judge granted interim injunction. On objection by the petitioner, the learned Judge dismissed the I.A., holding that the respondent has to prove the encroachment, but has not taken any steps for appointment of Advocate Commissioner. Hence, the respondent filed the present I.A.No.276 of 2014 for appointment of Advocate Commissioner to inspect and measure the suit property along with Surveyor. The petitioners 1 & 2 filed counter affidavit and submitted that inspection and measuring the suit property by an Advocate Commissioner can be done only if the respondent proves her title and encroachment by petitioners. The same has to be proved by letting in oral and documentary evidence. The petitioners 1 & 2 have not encroached any of the respondent's property and prayed for dismissal of I.A.

4.The learned Judge considering the averments in the affidavit and counter affidavit, allowed the I.A. for appointment of Advocate

Commissioner to inspect and measure the suit property as the same will not amount to collecting the evidence and it is necessary to decide the issue.

5. Against the said order dated 13.04.2016 made in I.A.No.276 of 2014, the petitioners 1 & 2 have come out with the present Civil Revision Petition. Pending Civil Revision Petition, the 1st petitioner died and petitioners 3 to 6 were brought on record as the legal heirs in the place of the 1st petitioner.

6. The learned counsel appearing for the petitioners submitted that the petitioners 1 & 2 have not encroached 'C' schedule property. There is already a compound wall to the height of about 5 ½ feet in between 'B' & 'C' schedule property, which was constructed in the year 2001. He further submitted that an Advocate Commissioner cannot be appointed to collect the evidence. The respondent is sister of the 1st petitioner and only to harass the 1st petitioner and his wife, the respondent has filed the suit and prayed for dismissing I.A.No.276 of 2014 and for allowing the present Civil Revision Petition.

7. The learned counsel appearing for the respondent submitted that the learned Judge has considered all the materials placed before him in proper perspective and exercising the powers conferred on him, has allowed the I.A

by giving cogent and valid reason. There is no error in the said order of the learned Judge warranting interference by this Court and prayed for dismissal of the Civil Revision Petition.

8.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondent and perused the entire materials on record.

9.From the materials on record, it is seen that the respondent has filed the suit against the petitioners 1 & 2 for declaration that 'C' schedule property which is part of 'A' schedule property is absolute property of the respondent and for mandatory injunction to remove the construction in the encroached portion in the 'C' schedule property. In the said suit, the petitioners 1 & 2 filed written statement. In paragraph No.3 of the written statement, the petitioners have stated as follows:

“...The plaintiff must first prove that the defendant has encroached upon 2 Cents of plaintiff's property. This can be found only through inspection and measurement by an Advocate/Commissioner with the help of a

qualified surveyor for which the plaintiff should take steps. Even if there is an excess extent of 2 Cents more than 9 Cents, (assuming for arguments sake) the plaintiff should prove that she is entitled to that extent (2 Cents) since she is entitled to an extent of about 6 Cents alone as per the decree. If the plaintiff is in possession of 6 Cents, she must be satisfied with that extent since she has been given an extent of about 6 Cents alone as per the decree in O.S.27/1997....”

Further, in I.A.No.1187 of 2012 filed by the respondent for interim injunction, the learned Judge has held that respondent has not taken any steps for appointment of Advocate Commissioner to measure the suit property with the help of a qualified Surveyor. In view of the stand taken by the petitioners in the written statement, now it is not open to the petitioners to contend that respondent cannot collect evidence by seeking appointment of Advocate Commissioner to measure the suit property. The petitioners have also taken a stand that if the respondent is in possession of 6 Cents in 'C' schedule property, she must be satisfied and she cannot make any claim against the petitioners. The learned Judge considering the entire materials, held that report of the Advocate Commissioner will assist the Court and the same

cannot be termed as collection of evidence and allowed the I.A. The learned Judge has given valid reason for appointment of Advocate Commissioner. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

10.For the above reason, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

20.09.2021

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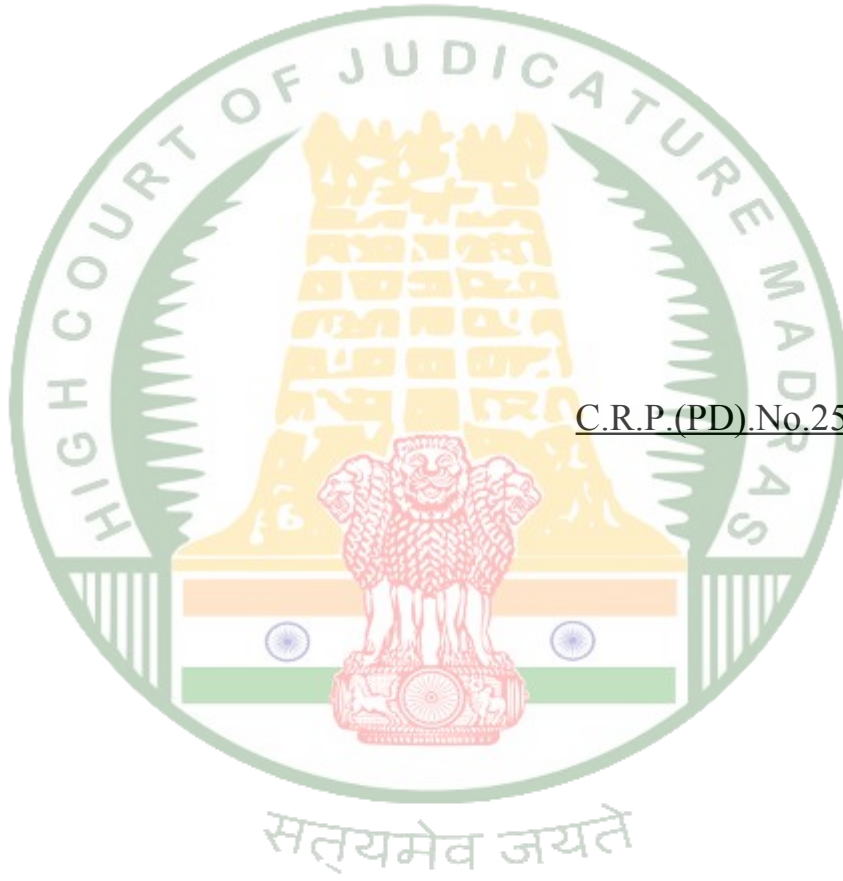
Index : Yes / No
Internet : Yes / No

To

The learned Principal District Munsif,
Villupuram.

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V.M.VELUMANI, J.
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