

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2021

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD)Nos.1720 & 1721 of 2021

and

CMP.Nos.13372,13377, 14276 & 14277 of 2021

(Through Video Conference)

E. Velu

...Petitioner in both Petitions

Versus

S. Ramesh

...Respondent in both Petitions

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the orders passed in I.A.Nos.4 & 5 of 2020 in O.S.No.2136 of 2017 on the file of the XVI Assistant City Civil Court, Chennai.

For Petitioner in both Petitions

: Mr.KSV Prasad

For Respondent in both Petitions

: Mr.R. Chandrasudan.

COMMON ORDER

These Civil Revision Petitions have been filed challenging the orders passed on 18.02.2021 in I.A.Nos.4 & 5 of 2020 in O.S.No.2136 of 2017 by the learned XVI Assistant Judge, City Civil Court, Chennai.

2. The I.A.No.4 of 2020 was filed under Order Rule 1 r/w Section 151 of Civil Procedure Code for reopening the case of the defendants in O.S.No.2136 of 2017 and IA.No.5 of 2020 was filed under Order 16 Rule 2 r/w Section 151 of Civil Procedure Code to summon the Tahsildar, Mylapore-Triplicane Taluk, Chennai District with the records relating to the properties in Gangadharan Nilayam Road as Court witness to give evidence, and permission for cross-examination by the counsel for the petitioner in the suit O.S.No.2136 of 2017. Both these petitions came to be dismissed by the learned XVI Assistant Judge, City Civil Court, Chennai. Against the said dismissal orders, these Civil Revision Petitions are preferred.

3. The learned counsel for the petitioner submitted that the petitioner has no objection for the respondent to enjoy his property. The only objection of the petitioner is that the respondent had removed certain bricks from the wall of the petitioner and put up pillar and that wall is an exclusive wall of the petitioner.

In support of his submissions, the learned counsel for the petitioner referred to the sale deed executed on 12.06.1955 which shows that except the Northern wall of the properties in the door nos.75/9, 75/10, 75/11 and 75/12, the other three walls on East, West and South belongs to the respective owners.

4.Thus, from the observations made in this sale deed, it is clear that the respondent has no right in the northern wall of his property and contrary to his right, he had caused damage to wall which is the southern wall of the petitioner. To prove his case, he wanted to summon the Tahsildar, Mylapore-Triplicane Taluk, Chennai District as Court witness with a direction to him to produce the records relating to the properties in Gangadharan Nilayam Road and for cross examination.

5.However the learned XVI Assistant Judge, City Civil Court, Chennai, without considering the claim of the petitioner, dismissed the petition. Along with this petition, the petitioner has also filed application to reopen the case and that was also dismissed. Therefore, he prays for setting aside the orders of the learned XVI Assistant Judge City Civil Court, Chennai and for allowing those applications.

6.In response, the learned counsel for the respondent submitted that the wall in question is not an independent and exclusive wall of the petitioner. In fact even as per the sale deed of the petitioner, he has only nine inches in the wall. It is his submission that the wall in question is a common wall, in which the respondent is also entitled to nine inches. Therefore, within the nine inches of the wall, he had removed the brick work and put up iron structures for putting up the columns.

7.Thus, the issue between both the parties falls into a narrow sphere as to whether the wall in question is an exclusive wall of the petitioner or the common wall of the respondent and the petitioner. For deciding this question, this Court is of the considered view that the oral and documentary evidence is the only source which will help the Court to come to a conclusion. Summoning the Tahsildar Mylapore-Triplicane Taluk, Chennai District for production of records relating to the properties in Gangadharan Nilayam Road, will no way help the parties in resolving this issue. Therefore, this Court finds that there is no reason to interfere with the orders of the learned XVI Assistant Judge, City Civil Court, Chennai in I.A.No.5 of 2020.

8. Before parting, the issue of whether the disputed wall is an exclusive wall of the petitioner or the common wall of the respondent and the petitioner is a matter to be adjudicated by the Court on the basis of the oral and documentary evidence produced. However, even assuming without admitting the case of the respondent, that the wall is a common wall, perusal of the photographs produced before this Court, which have been marked, and are available in page Nos. 48 to 52 of the typed set, shows that certain portion of the wall was damaged and at least in four places, brick works had been removed to an extent of four to six inches depth and iron pillars were placed for putting up columns.

9. Assuming without admitting that the Respondent has right in the common wall to put up pillars by digging to an extent of 9 inches, it is the responsibility of the respondent to ensure that the building in which the petitioner and his family members are residing, is not damaged in any way. If any damage is caused to the building, it is the duty and responsibility of the respondent to make good the damage and loss. Petitioner is given permission to examine any witness, if he feels absolutely necessary, to prove his case. In this

view of the matter order passed in I.A.No.4 of 2020 is set aside and allowed. Further, the Suit is of the year 2017. The learned XVI Assistant Judge, City Civil Court, Chennai is directed to dispose the said Suit in O.S.No.2136 of 2017 as expeditiously as possible, preferably within a period of three months from the date of receipt of copy of this order.

10. With the above observations and directions, these Civil Revision Petitions are disposed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

28.09.2021

jai/ay

Index: Yes/ No
Speaking Order / Non-Speaking Order

To

The XVI Assistant Judge,
City Civil Court,
Chennai

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G.CHANDRASEKHARAN, J.,

jai/ay



Order made in
C.R.P.(PD)Nos.1720 & 1721 of 2021

WEB COPY

Dated:
28.09.2021