

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD).No.2348 of 2018
and C.M.P.No.14520 of 2018

1.R.Aravamudhan

2.A.Prema

... Petitioners

Vs

P.Srinivasan (Deceased)

1.Mrs.Bhavani

2.Mr.S.Tharun Kumar

3.Mrs.P.Rani

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 18.07.2018 passed in C.M.P.No.341 of 2018 in A.S.No.551 of 2010 on the file of VII Additional City Civil Court, Chennai.

For Petitioners : Mr.K.Moorthy for Mr.S.R.Sundar

For Respondents : Mr.Sathish Rajan for R1 to R3

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 18.07.2018 passed in C.M.P.No.341 of 2018 in A.S.No.551 of 2010 on the file of VII Additional City Civil Court, Chennai, thereby dismissing the petition to appoint an Advocate Commissioner.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed a suit for bare injunction restraining the respondents from trespassing the suit property by cutting compound wall or by way of drilling and by putting up pillar columns over the compound wall in the exclusive passage. The suit was dismissed by the Judgment and Decree dated 18.08.2010. Aggrieved by the same, the petitioners preferred an appeal suit. During the pendency of the appeal suit, the petitioners filed a Contempt Application in I.A.No.1571 of 2012.

WEB COPY

3. On perusal of the affidavit filed in support of the Contempt Petition, while admitting the appeal, the Appellate Court ordered Status quo, the respondents demolished and altered the suit property, thereby committed

contempt of Court. While the Contempt Petition is pending the Contemnor died and his legal heirs were impleaded as the respondents in the appeal suit. When the appeal suit was posted for arguments, the petitioners filed a petition in C.M.P.No.341 of 2018 for appointment of an Advocate Commissioner to inspect the present status of the suit property.

4. On perusal of the affidavit filed in support of the petition in C.M.P.No.341 of 2018, the petitioners had stated that the respondents had constructed the basic structure of the suit schedule 'B' property by putting beam and pillar on the ground floor and by doing the same, the respondents and their successors cease their right from using the passage lying on the South Eastern side of the suit property having a width of 5 feet and length of 37.9 feet. Therefore, if an Advocate Commissioner is appointed he can note down the present status of the suit property, which would be useful for the Court. Since, the Appellate Court dismissed the said petition the petitioner filed this present Civil Revision Petition.

5. The learned counsel appearing for the petitioners submitted that as per the agreement entered between the predecessors of the petitioners as

well as the respondents, the passage leading to the property purchased by the party of the third part and lying on the South Eastern side of a width of 5 feet and length of 37.9 feet will be used by the party of the third part absolutely. The first floor construction lying on the said passage will be used by the parties of the second part with usage right. They would use the same till they sell it to any third party or make any reconstruction. In the event of demolition or reconstruction of the building in the 'B' schedule property, the usage right of the constructed area in the first floor over the passage automatically lapses. Therefore, now the respondents reconstructed the basis structure of suit 'B' schedule property by putting beam and pillar on the ground floor. Therefore, the appointment of an Advocate Commissioner is absolutely just and necessary to note down the present status of the suit property.

6. The learned counsel for the respondents would submit that the petitioners filed the suit for bare injunction and the same was dismissed. Aggrieved by the same, they filed the appeal suit in the year 2010 and both sides argued the appeal suit and thereafter, the petitioners filed an application for Contempt in C.M.P.No.419 of 2015. Since the Contemnor

died the matter was again posted for arguments. At that juncture, the petitioners filed the petition for appointment of Advocate Commissioner to ascertain the present status of the suit property. The suit itself filed only to restrain the respondents from damaging the compound wall by drilling and putting up pillar columns.

7. In fact, in the trial stage, an Advocate Commissioner was appointed and he has filed his report along with plan. After perusal of the Advocate Commissioner's report, the trial Court dismissed the suit. Again for using the averments, the petitioners sought for appointment of an Advocate Commissioner and the Appellate Court rightly dismissed the same.

8. Heard Mr.K.Moorthy for Mr.S.R.Sundar, learned counsel appearing for the petitioners and Mr.Sathish Rajan, learned counsel appearing for the respondents 1 to 3.

9. According to the petitioners, the respondents constructed the basic structure of the suit schedule 'B' property by putting beam and pillar of the ground floor. Therefore, as per the agreement entered between their

predecessors, the petitioners have lost their right to use the passage lying on the South Eastern side of the suit property.

10. Whereas the petitioners filed the suit only for bare injunction restraining the respondents from trespassing the suit property by cutting compound wall or by way of drilling and putting up pillar and the same was dismissed and aggrieved by the same, the petitioners filed appeal suit. Pending the appeal suit the petitioners also filed Contempt Petition and the same was closed since, the sole Contemnor died.

11. When the matter was posted for arguments again, the petitioners came forward with the petition for appointment of an Advocate Commissioner. It is nothing, but only to prolong the appeal suit. In a suit for bare injunction, the appointment of Advocate Commissioner is nothing but to gather evidence. If at all any reconstruction put up by the respondents it has to be proved by let in oral and documentary evidence. Therefore, the Court below rightly dismissed the petition for appointment of an Advocate Commissioner and this Court finds no infirmity or irregularity in the order passed by the court below.

12. Accordingly, this Civil Revision Petition is dismissed. It is made clear that the observation made by this Court will not affect in the minds of the Appellate Court while disposing the appeal suit. The Appellate Court is directed to dispose of the appeal suit within a period of **three months** from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

16.04.2021

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
rna

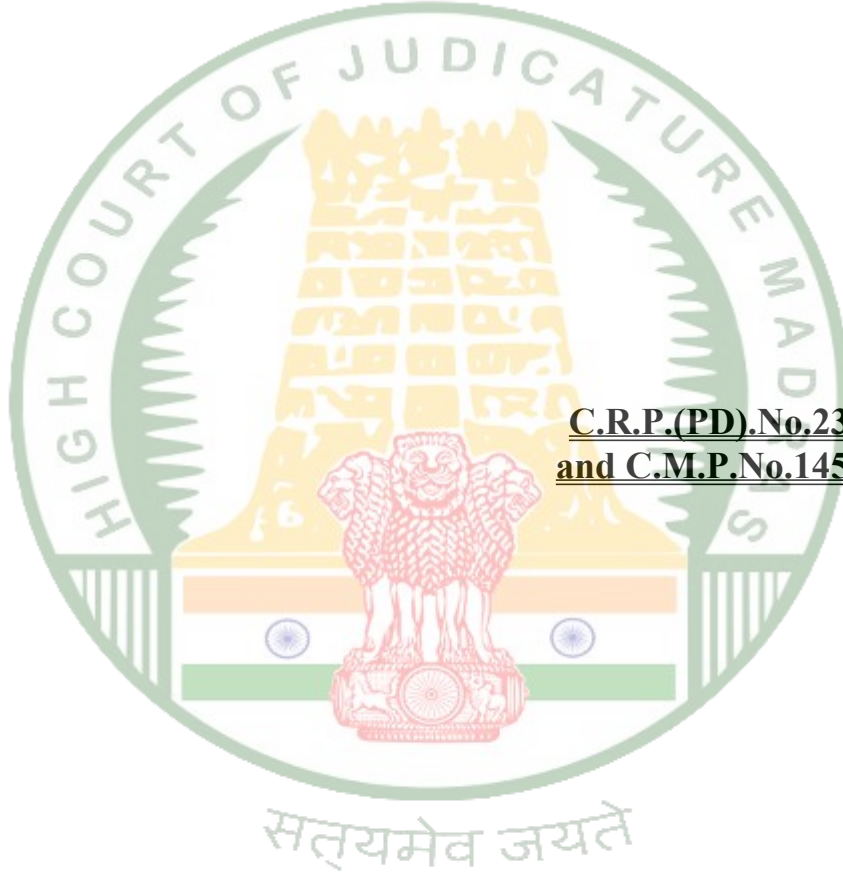
To

The VII Additional City Civil Court,
Chennai.

सत्यमेव जयते
WEB COPY

G.K.ILANTHIRAIYAN. J,

rna



C.R.P.(PD).No.2348 of 2018
and C.M.P.No.14520 of 2018

WEB COPY

16.04.2021