

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(PD) Nos.1558 & 1559 of 2021
and C.M.P.Nos.12208 & 12209 of 2021**

M.Prabhu

...Petitioner in both
the C.R.P's.

Vs.

P.G.Rajaram

...Respondent in both
the C.R.P's.

Common Prayer :- Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside in the fair and decreetal orders dated 07.04.2021 in I.A.Nos.2 & 3 of 2021 in O.S.No.541 of 2012 on the file of the Principal District Munsif Court, Salem.

In both the C.R.P's.:

For Petitioner : Mr.A.Thiyagarajan
Senior Counsel for Mr.S.Ramesh Kumar
For Respondent : Mr.S.Sudarshan

COMMON ORDER

These Civil Revision Petitions are filed to set aside in the fair and decreetal orders dated 07.04.2021 in I.A.Nos.2 & 3 of 2021 in O.S.No.541 of

2012 on the file of the Principal District Munsif Court, Salem.

2.A suit in O.S.No.541 of 2012 was filed by the respondent / plaintiff seeking the following reliefs of

- (a) restraining the defendant by way of a permanent injunction,
- (b) by way of mandatory injunction directing the defendant to demolish the construction over the encroached area measuring 7½ x80 on the Western portion of the suit property and hand over the same in its original position to the plaintiff,
- (c) to award cost of the suit to the plaintiff.

3.The case of the respondent/plaintiff is that the petitioner is the owner of the part of the suit property and he purchased the same on 24.01.1980. The respondent is the adjoining land owner on the Western side. The petitioner approached the respondent to sell a portion of his property. The respondent agreed to part with 12 feet on the Western side running east west and 80 feet running on North south to the suit property. The petitioner after acquiring 960 sq.ft from the respondent, for the valid consideration had encroached about 7 ½ x 80 ft on the Western side of the property of the

respondent. Therefore, the suit was filed for the aforesaid reliefs.

4.During the pendency of the suit, the respondent filed I.A. No.667 of 2013 for appointment of an Advocate Commissioner along with a qualified surveyor to inspect and measure the suit property. The said Interlocutory Application was dismissed after contest, on the ground that the respondent has not properly mentioned the description of the property and the area alleged to have been encroached. Further, it is held that even if the Advocate Commissioner is appointed, he would not be in a position to identify the encroachment, in the absence of specific measurements. In this view of the matter, I.A.No.667 of 2013 was dismissed on 05.10.2015. After that, the trial had commenced and the witnesses have been examined on the side of the plaintiff.

5.It is submitted by the learned counsel for the respondent that the petitioner/defendant has not chosen to cross examine the respondent/plaintiff.

Hence, it has become absolutely necessary for the respondent to file Interlocutory Applications in I.A.Nos.2 and 3 of 2021 for re-opening the case of the plaintiff for appointing the Advocate Commissioner with qualified Surveyor to inspect the suit property and measure the suit property to find out

the extent of encroachment. The above applications were contested by the petitioner.

6.The learned Trial Judge on considering the rival submissions and the materials available on record has allowed the Interlocutory Applications and appointed the Advocate Commissioner with a direction to note down the physical features of the suit property and to measure the suit property as per the sale deeds, revenue records and with the assistance of Revenue Officials. Against the said order, these Civil Revision Petitions are preferred.

7.The learned counsel for the petitioner submitted that there is no specific mention in the description of the property given in the plaint as to, ‘what is the extent of encroachment’ and ‘if there is any encroachment, that portion has not been specifically described in the plaint’. It is contrary to the provision of Order VII Rule 3 of CPC. The petitioner even in the year 2012 has clearly stated in the written statement that the plaint does not disclose correct description of the property and therefore, the plaint is liable to be rejected. The earlier application for appointment of Advocate Commissioner was rejected in the year 2015 and even thereafter, no efforts had been taken by the respondent to amend the plaint. When that be the case, the present

application filed is yet another attempt to collect evidence, after a long delay, which is impermissible in law. Therefore, the learned counsel for the petitioner prayed for setting aside the orders dated 07.04.2021 in I.A.Nos.2 & 3 of 2021 in O.S.No.541 of 2012 on the file of the Principal District Munsif Court, Salem.

8.Considered the rival submissions and perused the records.

9.As stated earlier, the suit was filed for the reliefs of permanent and mandatory injunctions. It is the specific case of the respondent that he is the owner of the suit property with its larger extent and sold a portion of the property to the petitioner. After purchasing 961 sq.ft., from the respondent, it is alleged that the petitioner had encroached about 7 ½ x 80 ft on the Western side of the property and constructed a building. This is the area, the respondent claims that the petitioner had encroached and prays for its removal. It is true that there is no specific details with regard to the encroachment made in the plaint schedule of the property. However, we cannot just stop with reading of the schedule of the property alone. The entire plaint has to be read to understand the case of the respondent/plaintiff. It is

clearly stated in the plaint that the petitioner/defendant purchased a portion of the property from the respondent/plaintiff and encroached a portion measuring 7 ½ x 80 ft on the Western side of the suit property. There is sufficient identification in the plaint with regard to the portion alleged to have been encroached by the petitioner. In a suit for mandatory injunction, unless the Court is appraised as to the fact that, 'whether there is any encroachment and if there is any encroachment, what is the extent of encroachment and whether the encroachment lies within the suit property', the Court would not be in a position to dispose of case effectively. Sufficient details are given in the plaint, to identify the alleged encroachment. To find out whether there is encroachment, appointment of an Advocate Commissioner to inspect the suit property with the help of the Surveyor on the basis of title deeds of the parties, revenue records is absolutely necessary, that was felt by the learned Trial Judge and the learned Trial Judge considering the materials placed before him, has rightly allowed the petition on 07.04.2021 in I.A.Nos.2 and 3 of 2021 to reopen the case for the purpose of adducing further evidence and for appointment of an Advocate Commissioner, to inspect and measure the suit property.

10. Therefore, this Court finds no reason to interfere with the orders of the learned Principal District Munsif, Salem, in I.A.Nos.2 & 3 of 2021 in O.S.No.541 of 2012 dated in 07.04.2021, for the reason that only if the Advocate Commissioner inspects the suit property, with the Surveyor and file report, the rights of the parties would be ascertained and justice can be delivered to the parties.

11. In this view of the matter, the orders of the learned Principal District Munsif, Salem, in I.A.Nos.2 & 3 of 2021 in O.S.No.541 of 2012 dated 07.04.2021, are confirmed and the Civil Revision Petitions are dismissed. No costs. Consequently connected miscellaneous petitions are closed.

Jer

02.09.2021

Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

WEB COPY

G.CHANDRASEKHARAN.J.

Jer

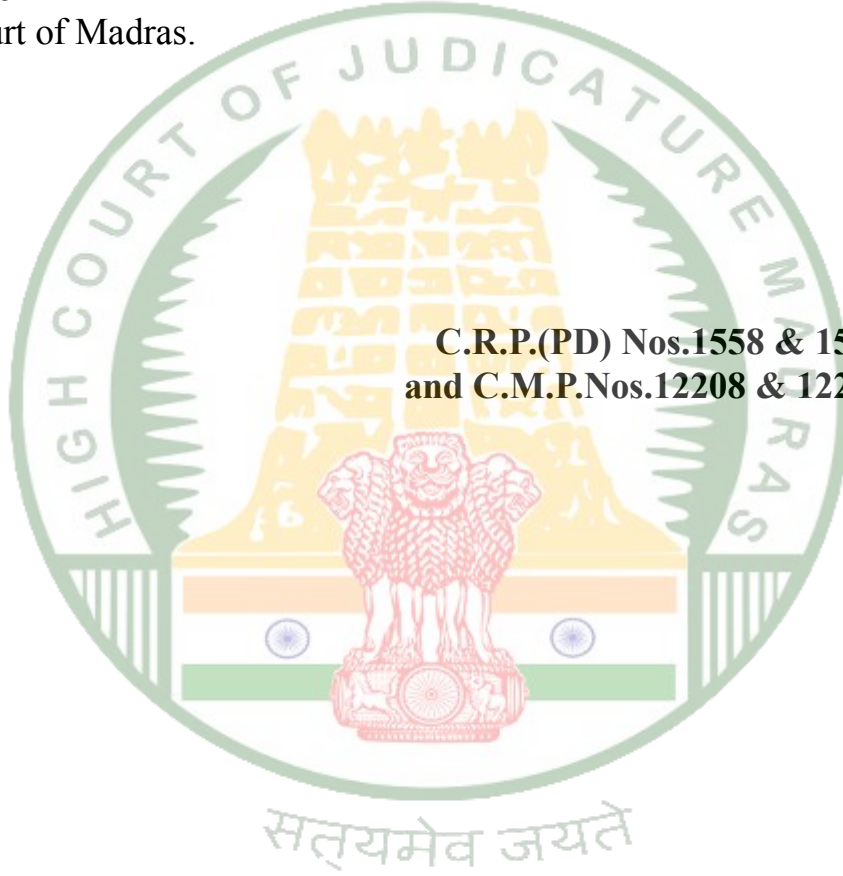
To

1.The Principal District Munsif Court, Salem.

2.The Section Officer

VR Section

High Court of Madras.



**C.R.P.(PD) Nos.1558 & 1559 of 2021
and C.M.P.Nos.12208 & 12209 of 2021**

WEB COPY

02.09.2021