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C.R.P. (PD) .No.996 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.996 of 2016

and

C.M.P.No.5610 of 2016

1.A.Aran,
rep. by his
Power of Attorney Agent,
P.Anbu,
S/o. Palanisamy,
H/7, Block, Ground Floor, Flat No.2,
4th Avenue, Indira Nagar, Adyar,
Chennai – 600 020.
M-52C, MIG Flat,
New No.M-50-C, L.B.Road,
Indira Nagar, Adyar,
Chennai – 600 020.

2.Anbarasi

.. Petitioners

Vs.

1.E.Jeyakarthick
2.Tamil Nadu Housing Board,
rep. by its Executive Engineer
and Administrative Officer,
Besant Nagar Division,
Dr.Muthulakshmi Salai,
Shastri Nagar, Adyar,
Chennai – 600 020.

.. Respondents



Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 30.11.2015 made in I.A.No.3308 of 2015 in I.A.No.11737 of 2011 in O.S.No.5709 of 2011 on the file of the II Assistant City Civil Court, Chennai.

For Petitioners : Mr.B.Thirumalai

For R2 : Mr.R.Sivakumar

ORDER

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

This Civil Revision Petition is filed against the fair and decretal order dated 30.11.2015 made in I.A.No.3308 of 2015 in I.A.No.11737 of 2011 in O.S.No.5709 of 2011 on the file of the II Assistant City Civil Court, Chennai.

2.The petitioners are defendants 1 & 2 in O.S.No.5709 of 2011. The 1st respondent filed the said suit against the petitioners and 2nd respondent as 3rd defendant for permanent injunction restraining the 1st petitioner from putting up further illegal and unauthorized construction in the common area which has been allotted for the benefit and enjoyment of the flat owners, for permanent injunction restraining the 1st petitioner to let out illegal and unauthorized



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construction to any third party and for mandatory injunction directing the petitioners to demolish the illegal and unauthorized construction put up by the petitioners in the common area. The 1st respondent along with the suit, filed I.A.No.11737 of 2011 under Order XXVI Rule 9 R/W Section 151 of the Code of Civil Procedure to appoint an Advocate Commissioner to measure the illegal and unauthorized construction put up by the 1st petitioner. In the said suit, the petitioners filed written statement on 14.11.2011. In the said I.A., the 1st petitioner filed counter affidavit on behalf of petitioners and after hearing the petitioner and respondents, the said I.A. was allowed and Advocate Commissioner was appointed to inspect the suit property; to note down its physical features of the suit property; measure the suit property and submit a report along with plan on 27.07.2012. The Advocate Commissioner inspected the suit property and filed his report on 01.08.2014.

3.The petitioners filed the present I.A.No.3308 of 2015 under Section 151 of the Code of Civil Procedure for re-issue of warrant to the Advocate Commissioner to inspect the entire Block of M-50, MIG Flats, L.B.Road, Indira Nagar, Adyar, Chennai – 600 020 including the additional construction put up by the 1st respondent on 05.02.2015. According to petitioners, the 1st



respondent also put up construction in the common area and has not approached the Court with clean hands. At the time of inspection by the Advocate Commissioner, the petitioners have given a memo to the Advocate Commissioner to inspect the entire Block of M-50, MIG Flats, L.B.Road, Indira Nagar, Adyar, Chennai – 600 020 in order to note down the additional construction put up by the 1st respondent. The Advocate Commissioner did not inspect the entire property stating that it is beyond the scope of warrant issued to him. In view of the same, it is necessary to re-issue the warrant to the Advocate Commissioner and prayed for allowing the I.A.No.3308 of 2015.

4.The 1st respondent filed counter affidavit in I.A.No.3308 of 2015 and submitted that the Advocate Commissioner inspected the premises and filed report along with photographs to show the illegal and unauthorized construction put up by the petitioners on 01.08.2014 itself. The petitioners have not filed any objections to the report of the Advocate Commissioner. When the suit is posted for cross examination of P.W.1, the petitioners have filed the present application after 6 months of Advocate Commissioner's report, only to drag on the proceedings and prayed for dismissal of I.A.No.3308 of 2015.



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2015.

5.The learned Judge considering the averments in the affidavit, counter affidavit, written statement and stage of the suit, dismissed the I.A.No.3308 of 2015.

6.Against the said order of dismissal dated 30.11.2015 made in I.A.No.3308 of 2015, the petitioners have come out with the present Civil Revision Petition.

7.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

8.From the materials on record, it is seen that the 1st respondent has filed the suit alleging that petitioners have put up unauthorized construction in the common area and prayed for permanent injunction not to put up any further construction and not to let out the third party and for a mandatory injunction to demolish the unauthorized construction put up by the 1st respondent. In the said suit on the application filed by the 1st respondent in I.A.No.11737 of 2011, an Advocate Commissioner was appointed to inspect the suit property. The



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Advocate Commissioner executed the warrant of commission and filed report with photographs on 01.08.2014. From the typed set of papers filed by the petitioners and materials on record, it is seen that the petitioners have not filed any objection to the Advocate Commissioner's report. It is the case of the petitioners that 1st respondent also put up unauthorized construction and suppressing the said fact, the 1st respondent approached the Court without clean hands. On these allegations, the petitioners sought for re-issue of warrant of commission to the Advocate Commissioner to inspect the entire Block of M-50, MIG Flats, L.B.Road, Indira Nagar, Adyar, Chennai – 600 020 and to note down the unauthorized construction put up by the 1st respondent. This relief sought for by the petitioners is beyond the scope of suit itself. The issue in the suit is only with regard to unauthorized construction put up by the petitioners. In the written statement, the petitioners have stated that 1st respondent has constructed a shed in front of his property (450 sq.ft) and has constructed a RCC sheet shed on the south western corner of the property and occupied the rear side of the portion measuring 200 sq.ft and erected 8 feet wall fixed grills on the rear side abutting the RCC shed. Though the petitioners have stated so in the written statement, they have not made any counter claim for removal of construction put up by the 1st respondent. Further, the Advocate Commissioner



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as per the warrant issued, inspected the property and filed his report as early as on 01.08.2014. The petitioners have not filed any objection to the report of the Advocate Commissioner. Only after the lapse of 6 months and when the suit was posted for cross examination of P.W.1, the petitioners have come out with the present application in I.A.No.3308 of 2015. Even though the 1st respondent has put up any construction as alleged by the petitioners, the same is not an issue in the suit filed by the 1st respondent and no relief is sought for by the petitioners against the 1st respondent for mandatory injunction directing the 1st respondent to demolish the construction put up by him. The petitioners are seeking to collect evidence through the Advocate Commissioner.

9.It is well settled that a party cannot collect evidence through Advocate Commissioner and he has to prove the case by letting in acceptable evidence. The learned Judge considering the above materials, rightly dismissed the application in I.A.No.3308 of 2015 by giving cogent and valid reason. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

10.For the above reasons, this Civil Revision Petition is dismissed.



Consequently, the connected Miscellaneous Petition is closed. No costs.

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13.12.2021

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Index : Yes / No

Internet : Yes / No

To

The learned II Assistant Judge,
City Civil Court,
Chennai.

V.M.VELUMANI, J.

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