

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.345 of 2017

and

C.M.P.Nos.1572 & 5841 of 2017

S.Dillibabu

.. Petitioner

Vs.

1.Mangaldurai

2.Prabhu Arjun Singh

3.T.A.Sampath

4.The Chennai Metropolitan Development Authority,
rep. by its Member Secretary,
Thalamuthu Natarajan Maligai,
Egmore, Chennai – 600 008.

5.The Corporation of Chennai,
rep. by Commissioner,
rep. by its Commissioner Ripon Building,
Egmore, Chennai – 600 008.

.. Respondents

(RR 2 to 5 are not necessary parties.
Hence, RR 2 to 5 given up)

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 11.01.2017 made in I.A.No.9770 of 2016 in O.S.No.2173 of 2000 on the file of the Learned XV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.S.Krishnasamy

For R1 : Mr.B.Sathish Babu

For RR 2 to 5 : Given up

ORDER

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

This Civil Revision Petition is filed against the fair and decretal order dated 11.01.2017 made in I.A.No.9770 of 2016 in O.S.No.2173 of 2000 on the file of the Learned XV Assistant Judge, City Civil Court, Chennai.

2.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent.

3.The petitioner is 3rd defendant, the 1st respondent is plaintiff in O.S.No.2173 of 2000. The respondents 2 and 3 are defendants 1 and 2 and the respondents 4 and 5 are defendants 4 and 5 in the said suit. The 1st

respondent filed the said suit against the petitioner and respondents 2 to 5 for declaration of the easmentary right of passage on the eastern side of the suit building with unobstructed free access to the rear side of the building, directing the removal of the obstructions of the passage on the eastern side caused by the room with toilet put up on the eastern side passage of the suit building and removal of the staircase of the said unauthorized structure in the eastern passage. The petitioner filed written statement and additional written statement and is contesting the suit. The 1st respondent filed I.A.No.9770 of 2016 under Order XXVI Rule 9 of the Civil Procedure Code to appoint an advocate commissioner to inspect the suit property and to note down the physical features, draw a sketch with measurements of the suit property and to file a report. According to the 1st respondent, pending suit, the petitioner put up additional construction on the eastern side by blocking the common passage. On the other hand, in the counter affidavit filed in the said I.A., the petitioner has stated that construction on the eastern side was put up by his predecessor in title and is in existence for more than 24 years. The petitioner purchased the property in the year 2005 along with construction and he is in possession of the said property. The 1st respondent knew about the construction put up by the predecessor in title of the petitioner even at the

time of filing of the suit. Advocate Commissioner is not a proper person to ascertain the age of the building and only qualified Civil Engineer can ascertain the age of the building. The petitioner further contended that the 1st respondent has separate entrance on the western side and the vendor of the 1st respondent has converted the garage into a room and a toilet over the said room in the year 1985. The petitioner further submitted that both Eastern side and Western side of the property must be inspected by a qualified Civil Engineer and then only the age of the property can be ascertained.

4.The learned Judge considering the averments in the affidavit, counter affidavit and taking note of the fact that 1st respondent is seeking mandatory injunction of removal of unauthorized construction, allowed the I.A., appointed an advocate commissioner to inspect the suit property and other portions (outside entire building) with the help of a qualified Engineer after due notice to the parties or their counsels concerned and file a report along with plan.

5.Against the said order dated 11.01.2017 made in I.A.No.9770 of 2016, the petitioner has come out with the present Civil Revision Petition.

6.From the materials available on record and impugned order of the learned Judge it is seen that in view of the relief of mandatory injunction sought for in the suit, the exact extent of unauthorized construction must be ascertained. Further, it is the case of the petitioner before the learned Judge by filing counter that both Eastern and Western side of the suit property must be inspected to ascertain the age of the building by a Civil Engineer. The learned Judge considering the pleadings, averments in the counter affidavit filed by the petitioner and arguments of counsel for 1st respondent, has appointed the advocate commissioner and directed the advocate commissioner to inspect the suit property and other portions (outside entire building) with the help of a qualified Civil Engineer after due notice to the parties or their counsels concerned and file a report with plan. In view of the fact that the petition filed before the learned Judge was accepted and advocate commissioner was appointed and the learned Judge directed the advocate commissioner to inspect the entire suit property with the help of qualified Civil Engineer and file the report with plan, the present Civil Revision Petition filed against the said order is devoid of merits. There is no error in the said order of the learned Judge warranting interference by this Court.

7.In the result, this Civil Revision Petition stands dismissed.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

31.08.2021

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Index : Yes / No

Internet : Yes / No

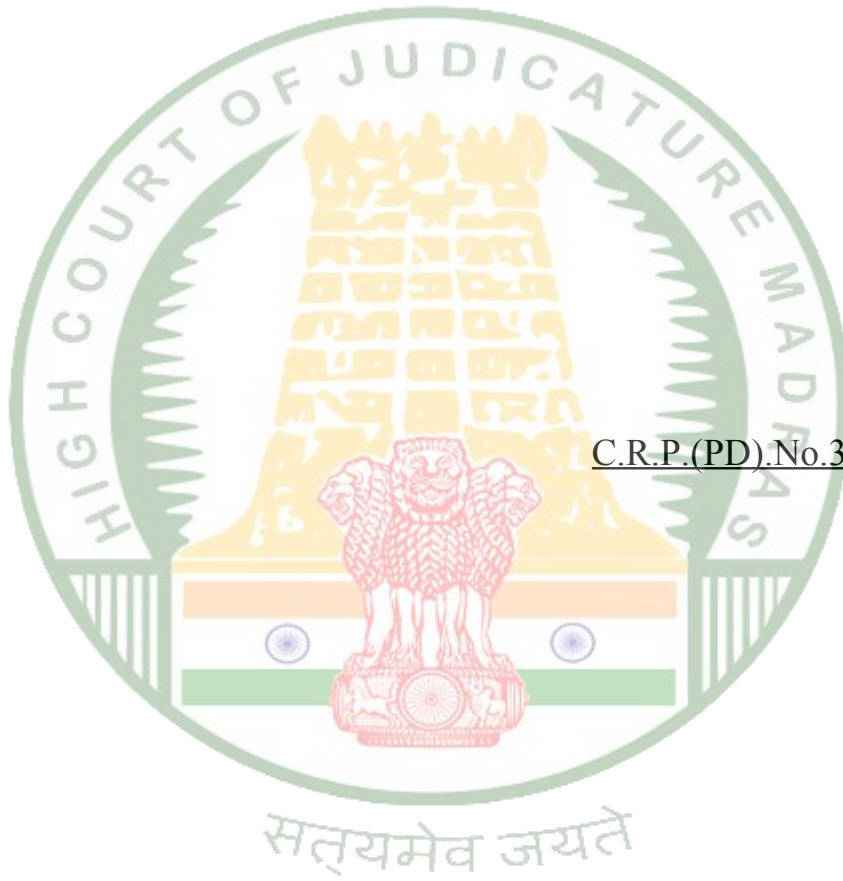
To

The XV Assistant Judge,
City Civil Court,
Chennai.



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V.M.VELUMANI, J.
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