

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.03.2021

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.No. 3706 of 2017
and
C.M.P.No. 17217 of 2017

M. Prem Chand Baid

... Petitioner

Vs.

1. S.Kathirvelu

2. Pachaiyappa Trust Office
Pachaiyappan College Campus,
Chennai - 600 030.

3. S. Pannalal Baid

... Respondents

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 16.08.2017 made in I.A.No.3999 of 2016 in O.S.No.2610 of 2013 on the file of XV Assistant City Civil Court, Chennai.

For petitioner : Mr.M. Chidambaram

For R1 : Mr.T. Sundaresan

For R2 : Mr.K.V.Sundararajan

R3 : Not ready in Notice

ORDER

This Civil Revision Petition has been filed by the petitioner/1st defendant against the fair and decreetal order passed in I.A. No.3999 of 2016 in O.S. No.2610 of 2013 by dismissing the petition to implead the proposed parties as 3rd defendant in the suit.

2. The revision petitioner is the 1st defendant in the original suit filed by the petitioner/1st defendant herein. The first defendant filed a suit in O.S.No.2610 of 2013 before the XV Assistant City Civil Court, Chennai, for declaration and permanent injunction.

3. During the pendency of the suit, the 1st defendant has filed an Interlocutory Application for appointment of Advocate Commissioner to measure the front portion of the property bearing Door Nos.34, 35 and 36, V.M. Street, Royapettah, Chennai-600 014. While dismissing the petition, the Court below reasoned that the dispute with regard to the properties are Door Nos.35 and 36.

4. Admittedly, the property situated at Door No.34 is not the subject matter of the suit. The 1st defendant did not file any application to implead the owner of the property situated at Door No.34. Unless the owner of Door No.34 is the party to the proceedings, the property cannot be measured. Therefore, the revision petitioner herein filed a petition to implead the proposed party as 3rd defendant in the suit. Subsequently, the Court below dismissed the petition only for the reason that it is not the case of the 1st defendant that the proposed party had encroached upon the northern portion of the plaintiff's property. It is only an assumption of the petitioner that the proposed party had encroached some portion of the plaintiff's property on the northern side. When the Court below while dismissing the petition for appointment of Advocate Commissioner for the aforesaid reason, the Court below ought to have allowed the said application as proposed party to be added as one of the 3rd defendant in the suit.

5. In view of the aforesaid observations, the order passed by the Court below in I.A.No.3999 of 2016 in O.S.No.2610 of 2013 on the file of XV Assistant City Civil Court, Chennai, is hereby set aside and the Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The XV Assistant Judge,
City Civil Court, Chennai.

+1cc to Mr.M. Chidambaram, Advocate Sr.No.16934

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NR 16/04/2021