

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.12.2020

PRONOUNCED ON : 09.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(PD)No.86 of 2017  
CMP.No.448 of 2017

(Through Video Conferencing)

1. N.S.Ramaswami
2. N.R.Nagarajan

Petitioners

Vs

1. S.Ramasamy Nadar
2. R.Murugesh
3. The Chennai Metropolitan Development Authority  
by its Member Secretary, Chennai-8
4. The Commissioner, Corporation of Chennai  
Chennai-3
5. The Deputy Director of Town and Country Planning  
by its Deputy Director, Chengalpattu

Respondents

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, to set aside the fair and decretal order dated 18.10.2016 passed in IA.No.917 of 2014 in OS.No.568 of 2014, by the Additional District Munsif, Alandur.

For Petitioner : Mr.R.U.Dinesh Raj Kumar

For Respondent : Ms.S.Anuradha Balaji-RR1&2  
Mr.P.S.Ganesh-R3  
Mr.Manikandan-R5

ORDER

1. This Civil Revision Petition has been filed, to set aside the fair and decreetal order, dated 18.10.2016, passed in IA.No.917 of 2014 in OS.No.568 of 2014, by the Additional District Munsif, Alandur.
2. The facts of the case, in a nutshell, are that the Defendants 4 and 5 are the Petitioners and the Plaintiffs and the Defendants 1 to 3 are the Respondents. The suit was filed for declaration and for permanent injunction. The Plaintiffs have filed the application, seeking to appoint an Advocate Commissioner to note down the physical features of the property in question with the help of a Surveyor and to file a report. The said application was allowed by the impugned order. As against the same, this Civil Revision Petition has been filed by the Defendants 4 and 5.
3. The learned counsel for the Petitioners has submitted that the Petitioners had never obstructed or encroached upon the suit passage and hence, appointment of Advocate Commissioner is not necessary and that the application had been filed, seeking appointment of Advocate Commissioner only for collecting evidence and that the court below, without assigning any reason and without appreciating the various documents to prove that they had left the passage in their layout, had allowed the application erroneously and accordingly, this Civil Revision Petition is to be allowed, setting aside the impugned order.
4. The learned counsel for the Respondents 1 and 2 has submitted that the suit passage is their exclusive property and the Defendants 4 and 5 have no right

over the same and that the Defendants 4 and 5, by virtue of the earlier decree, are attempting to encroach upon the present suit passage deceitfully and hence, in order to avoid any conflict to the earlier decree, the physical features of the property in question are necessary to be inspected by an Advocate Commissioner and considering those aspects, the court below has rightly allowed the application and accordingly, this Civil Revision Petition is to be dismissed.

5. This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.
6. In this case, the suit was filed for declaration that the B-Schedule property is the exclusive passage of the Plaintiffs and for permanent injunction, restraining the Defendants from interfering with their possession and enjoyment of the same. The Plaintiffs have alleged that the Defendants are attempting to encroach upon the said property and they are causing disturbance to them.
7. In a case, where there is an allegation of encroachment, one of the methods, to find out as to whether or not there is such an encroachment or disturbance, is to appoint an Advocate Commissioner to know the exact physical features of the property in question, to bring out the truth and on such exercise, the Court would be in a better position to analyse and understand as to whether the plaintiff or the defendant is speaking the truth with regard to the actualities in the suit property. Even if an Advocate Commissioner is appointed and his report is filed, it can be questioned by the

A.A.NAKKIRAN, J.

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other side by filing objections, as the dispute in the suit could be resolved only on the basis of oral and documentary evidence let in by the parties. In such view of the matter, this Court is of the view that the impugned order of the court below, allowing the application for appointment of Advocate Commissioner is proper and sustainable.

8. In fine, this Civil Revision Petition is dismissed. No costs. Consequently, the connected MP is closed. The Trial Court is directed to dispose of the suit, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

09.03.2021

Index:Yes/No  
Web:Yes/No  
Speaking/Non Speaking  
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To

1. The Additional District Munsif, Alandur

Pre-Delivery Order in  
CRP(PD)No.86 of 2017

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