

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY ONE**

PRESENT

THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

CIVIL REVISION PETITION NO: 3097 OF 2015

Petition under Article 227 of the Constitution of India aggrieved by the order dated 27.07.2015 in I.A.No.7 of 2015 in O.S.No.4599 of 2008 on the file of the Court of the Principal Rent Controller –cum- 12th Junior Civil Judge, Hyderabad.

Between:

1. K. Anasuyamma, W/o Late K. Achaiah, aged about 68 years, Occ: Household,
2. K. Karun Kumar Yadav, S/o Late K. Achaiah, aged about 37 years, Occ: Business,

Both are R/o. H.No. CIB Quarter No.14 B, MCH No.6-1-269, AP Housing Board, Khairatabad, Hyderabad.

...PETITIONERS/RESPONDENTS/DEFENDANT Nos.1 & 3

AND

1. G. Balaiah @ Aggu Balaiah, S/o G. Pentaiah @ Aggu Pentaiah, aged about 69 years, Occ: Retd., Service, R/o H.No.6-1-271, Kairatabad, Hyderabad.

...RESPONDENT/PETITIONER/PLAINTIFF

2. A. Sitamma, W/o. Late K. Achaiah,

(Died on 02.07.2012, therefore not necessary party)

...RESPONDENTS/RESPONDENTS/DEFENDANT NO.1

CRPMP. NO: 4128 OF 2015

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to grant stay of all further proceedings including execution of warrant by the Advocate Commissioner as per the orders dt.27.07.2015 made in I.A.No.7 of 2015 in O.S.No.4599 of 2008 on the file of the Principal Rent Controller, Hyderabad pending disposal of CRP of 2015.

Counsel for the Petitioners: SRI L. PRABHAKAR REDDY

Counsel for the Respondents: SRI B. AJAY

The Court made the following: ORDER

THE HON'BLE SMT. JUSTICE P. SREE SUDHA

CIVIL REVISION PETITION No.3097 of 2015

ORDER:

This C.R.P. is filed by the defendants in the suit, questioning the order dated 27.7.2015 passed in I.A.No.7 of 2015 in O.S.No.4599 of 2008 on the file of Principal Rent Controller-cum-XII Junior Civil Judge, Hyderabad.

2. The suit in O.S.No.4599 of 2008 was filed for mandatory injunction to demolish the illegal and unlawful construction on upper three floors of defendants 1 and 2 on the plaintiff property's common wall. In the said suit, plaintiff filed I.A.No.7 of 2015 under Order 26 Rule 9 read with Section 151 of CPC to appoint an Advocate Commissioner to note down the physical features including measurement of walls between CIB Quarter No.15/B and 14/B. The trial Court, after considering the matter, allowed the application by impugned order dated 27.7.2015, appointing Mr.B.Preetam Singh, as Advocate Commissioner to note down the physical features in between CIB Quarter Nos.15/B and 14/B and also to note down in his report whether there exists a common wall in between both the quarters and also to measure the joint common wall in between the said quarters. Questioning the said order, the present revision petition is filed by the defendants.

3. According to the learned counsel for revision petitioners/defendants, the suit is filed for mandatory injunction for demolition of the constructed portion of the defendants and it is for the plaintiff to plead and prove his case instead of collecting evidence through Advocate Commissioner. It is further stated that the plaintiff is a subsequent purchaser to that of defendants and he cannot be allowed to contend that the wall between the parties is a common wall, which is contrary to the record and without any valid proof. It is also stated that the defendants have purchased the property on 8.4.1969, much prior to the purchase of plaintiff's mother who purchased on 9.6.1994.

4. The learned counsel for the revision petitioners/defendants submitted that in the written statement filed by defendants, it is categorically stated that in the sale deed of plaintiff's mother in respect of Qr.No.15/B, no common wall is mentioned in the recitals or it was shown in the plan annexed to the sale deed and there is no common wall existing between plaintiff and the defendants quarters, therefore, the question of encroachment on to the alleged common wall by the defendants does not arise. Therefore, the impugned order passed by the trial Court, directing the Advocate Commissioner to note down the physical features of the subject property and also to note there exists a common

wall or not, is arbitrary, illegal and contrary to the record and therefore liable to be set aside.

5. Heard the learned counsel for revision petitioners and perused the record.

6. Since the defendants specifically contended in their written statement that there is no common wall in existence between the plaintiff and defendants, the impugned order of the trial Court appointing the Advocate Commissioner to note down whether there exists a common wall or not is error apparent on the face of the record and is liable to be set aside.

Accordingly, the C.R.P. is allowed, setting aside the order dated 27.7.2015 passed in I.A.No.7 of 2015 in O.S.No.4599 of 2008 on the file of Principal Rent Controller-cum-XII Junior Civil Judge, Hyderabad. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

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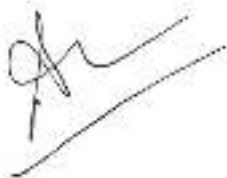
SD/-K.SAILESHI
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The Principal Rent Controller -cum- 12th Junior Civil Judge, Hyderabad.
2. One CC to Sri L. Prabhakar Reddy, Advocate [OPUC]
3. One CC to Sri B. Ajay, Advocate [OPUC]
4. Two CD Copies
5. One Spare Copy

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HIGH COURT

DATED: 31/12/2021



ORDER

CRP.No.3097 of 2015

ALLOWING THE CRP

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KMS
029/01/2022