



C.R.P.No.1384 of 2020
and C.M.P.No.8038 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

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THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.1384 of 2020

and

C.M.P.No.8038 of 2020

Azhwar

...Petitioner

Vs.

Joseph Premraja

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal orders dated 29.11.2019 in I.A.No.118 of 2015 in O.S.No.45 of 2013 on the file of the District Munsif cum Judicial Magistrate, Vanur.

For Petitioner : Mr.S.Kishore Kumar

For Respondent : Mr.S.Prem Auxilian Raj

ORDER

This Civil Revision Petition is filed against the fair and decretal orders dated 29.11.2019 in I.A.No.118 of 2015 in O.S.No.45 of 2013 on the file of the District Munsif cum Judicial Magistrate, Vanur. 2.



C.R.P.No.1384 of 2020
and C.M.P.No.8038 of 2020

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The revision petitioner is the defendant in O.S. No.45/2013 on the file of the District Munsif cum Judicial Magistrate, Vanur. The respondent/plaintiff filed the suit for declaration of his title to the suit A and B schedule properties and for a permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit properties. He has further prayed for recovery of possession of B schedule property after demolishing the superstructure put up by the defendant over the same.

3. The defendant filed a written statement. Thereafter, the plaintiff filed an application in I.A. No.118/2015 in the suit under Order XXVI Rule 9 and Section 151 CPC to appoint an advocate commissioner to inspect the suit property to note down the physical features and also to measure the same with the help of a Taluk surveyor. The respondent/defendant filed a counter and after full contest, the learned District Munsif cum Judicial Magistrate allowed the said application and appointed an Advocate Commissioner to inspect the suit A and B schedule properties and to measure the same with the help of a Taluk



C.R.P.No.1384 of 2020
and C.M.P.No.8038 of 2020

WEB COPY

surveyor vide its orders dated 29.11.2019. Aggrieved over the same, the present Civil Revision Petition is filed by the defendant.

4. Heard Mr.S.Kishore Kumar, learned counsel appearing for the revision petitioner and Mr.S.Prem Auxilian Raj, learned counsel appearing for the respondent.

5. The learned counsel appearing for the revision petitioner contended that the encroachment made by the defendant in the suit property cannot be ascertained by means of a report of the Advocate Commissioner and that the trial court did not even consider the averments made in the affidavit filed along with the petition in I.A. No.118/2015 wherein the respondent has mentioned as follows:

"3.--- suit A-schedule property which is the larger extent of suit B schedule property was purchased by my father by virtue of two registered sale deeds dated 29.02.1968 in Doc. No.502/1968 and 2/3/1968 in Doc. No.528/1968. After having sold the larger extent as individual residential plots, the suit A-schedule property



C.R.P.No.1384 of 2020
and C.M.P.No.8038 of 2020

WEB COPY

was retained by my father for his personal use, the respondent/defendant who has no right, title or interest in suit A or B schedule property has encroached upon a portion of approximately 650 sq. ft. on the eastern side of suit A-schedule property which is the suit B-schedule property by taking advantage of my absence from the suit properties and his proximity to the suit property. As soon as I came to know about such encroachment I took all possible efforts for a joint survey of the encroached portion which was systematically thwarted by defendant on some pretext or the other, including filing of Civil Suit in O.S. No.95/2012 on the file of this Hon'ble Court against all the Government Departments. I was therefore constrained to file the present suit seeking various reliefs including demolition of illegal construction in suit B-schedule property. Since the suit filed by me is a comprehensive suit for declaration, recovery of possession and removal of encroachment and since the exact area of encroachment could only be ascertained by me approximately because of respondent/defendant's continuous resistance to any measurements, the description of suit B-schedule property was only approximate. In order to have a comprehensive adjudication of all the issues in the present suit including



C.R.P.No.1384 of 2020
and C.M.P.No.8038 of 2020

WEB COPY

the relief of mandatory injunction for demolition, it is essential that an Advocate Commissioner is appointed by this Hon'ble court for carrying out specific ministerial activities which will be helpful for this Hon'ble Court to have a fair adjudication on all aspects of the case.

6. Per contra learned counsel appearing for the respondent/plaintiff would contend that the revision petitioner/defendant in his written statement has not mentioned the new survey No.148 and has mentioned old Survey No.153 to show that there is no encroachment.

7. At the outset, it may be observed that an Advocate Commissioner was appointed by the trial court only for the purpose of measuring the suit properties i.e. A and B schedule properties with the help of a taluk surveyor. The specific contention of the plaintiff in the suit is that the defendant encroached upon B schedule property, which absolutely belonged to him, by putting up a superstructure. It is pertinent to mention that the suit is of the year 2013 and by filing the present CRP, the entire proceedings in O.S. No.45/2013 had been stalled. No prejudice



C.R.P.No.1384 of 2020
and C.M.P.No.8038 of 2020

WEB COPY

would be caused if the Advocate Commissioner measures both A & B schedule properties with the help of a taluk surveyor.

8. In the circumstance, I do not find any infirmity in the orders passed by the trial court. Accordingly, the Civil Revision Petition fails and is therefore, dismissed.

9. In the result,

- i. the Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petitions is dismissed.
- ii. the fair and decretal orders dated 29.11.2019 in I.A.No.118 of 2015 in O.S.No.45 of 2013 on the file of the District Munsif cum Judicial Magistrate, Vanur, is upheld.
- iii. The trial court is directed to dispose of the suit as expeditiously as possible after getting the report of the Advocate Commissioner.

12.10.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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Page 6/7



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C.R.P.No.1384 of 2020
and C.M.P.No.8038 of 2020

R. HEMALATHA, J.
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To

- 1.The District Munsif cum Judicial Magistrate, Vanur.
- 2.The Section Officer, VR Section, High Court, Madras.

C.R.P.No.1384 of 2020
and C.M.P.No.8038 of 2020

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