



C.R.P.(PD)No.4178 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4178 of 2015
and M.P.No.1 of 2015

1.K.Pattammal
2.K.Anandan

.. Petitioners

Vs.

M.Yogalakshmi

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 05.03.2015 made in I.A.No.18353 of 2011 in O.S.No.8439 of 2011 on the file of the XV Assistant City Civil Court, Chennai.

For Petitioners : Mr.S.Balaji

ORDER

(The matter is heard through “Video-conferencing”)

Civil Revision Petition is filed against the fair and decretal order dated 05.03.2015 made in I.A.No.18353 of 2011 in O.S.No.8439 of 2011 on the file of the XV Assistant City Civil Court, Chennai.



C.R.P.(PD)No.4178 of 2015

WEB COPY

2.The petitioners are the defendants and respondent is the plaintiff in O.S.No.8439 of 2011 on the file of the XV Assistant City Civil Court, Chennai. The respondent filed the said suit for permanent injunction and for mandatory injunction to remove the compound wall described in 'A' schedule property. Pending suit, the respondent filed I.A.No.18353 of 2011 under Order XXVI Rule 9 of C.P.C. for appointment of an Advocate Commissioner to measure the property of the respondent described in the schedule 'A' with that of petitioners' property described in the schedule 'B' along with surveyor and file report.

3.According to the respondent, she is the owner of 'A' schedule property measuring 1019 sq.ft., the petitioners have encroached the said property and put up a compound wall.

4.The petitioners filed counter affidavit and stated that they have already obtained permanent injunction against the respondent in O.S.No.8989 of 1993. The respondent violated the decree of permanent



C.R.P.(PD)No.4178 of 2015

injunction. The petitioners filed E.P.No.437 of 2008 to arrest and detain the respondent in civil prison for violating the decree passed against her. The respondent filed E.A.No.4311 of 2011 in E.P.No.437 of 2008 for appointment of Advocate Commissioner and the same was dismissed on 19.07.2012. The respondent has not initiated any further proceedings against the said order of dismissal. The respondent is again seeking the very same relief in the present application, which is not maintainable and prayed for dismissal of the said application.

5.The learned Judge considering the order passed in E.A.No.4311 of 2011 in E.P.No.437 of 2008 dated 19.07.2012, found that the respondent's request for re-issue of warrant of Commission was dismissed on the ground that the respondent has not given boundaries of her property and dismissed the application in respect of 'B' schedule property. In respect of 'A' schedule property, the respondent has given details of her property in the present application with boundaries of the properties and the learned Judge appointed Advocate Commissioner to inspect and



C.R.P.(PD)No.4178 of 2015

measure 'A' schedule property with the help of taluk surveyor and file report.

6. Against the said fair and decretal order dated 05.03.2015 made in I.A.No.18353 of 2011 in O.S.No.8439 of 2011, the petitioners have come out with the present Civil Revision Petition.

7. The learned counsel appearing for the petitioners contended that the learned Judge failed to see that respondent's earlier request for similar relief in E.A.No.4311 of 2011 in E.P.No.437 of 2008 in O.S.No.8989 of 1993 on the file of the IX Assistant City Civil Court, Chennai, was rejected on 19.07.2012 and the same has become final. The learned Judge has misread the order dated 19.07.2012 in E.A.No.4311 of 2011 in E.P.No.437 of 2008 in O.S.No.8989 of 1993 and erred in holding that the respondent has given details of 'A' schedule property. But a reading of 'A' schedule property reveals that respondent has not given measurement in square feet in the boundaries and for the said reason, the Executing Court



C.R.P.(PD)No.4178 of 2015

dismissed E.A.No.4311 of 2011 filed by the respondent. Even in the sale deed marked as Ex.P2, the boundary description in exact square feet is not given. It is the respondent, who has encroached the property of the petitioners to an extent of 204 sq.ft. and inspite of direction given by IX Assistant City Civil Court, Chennai, to remove the encroachment within two months, the respondent has failed to comply with the same. The respondent has not approached the Court with clean hands and has not entitled to any indulgence of the Court. In support of his contentions, the learned counsel appearing for the petitioners relied on the Order of this Court reported in **2012 (6) CTC 502 (Santha Satheesh vs. H.J.Walter and others)** and submitted that in a suit for injunction, the party cannot ask for appointment of Advocate Commissioner to collect the evidence.

8.C.R.P. is pending from the year 2015 and till date, no notice was served on the respondent.

9.Heard the learned counsel appearing for the petitioners and perused the entire materials on record.



C.R.P.(PD)No.4178 of 2015

WEB COPY

10. From the materials on record, it is seen that it is the case of the respondent that the petitioners have encroached her property and put up compound wall. On the other hand, it is the case of the petitioners that it is the respondent, who has encroached the petitioners' property to an extent of 204 sq.ft. From these allegations and counter allegations, it is seen that there is a dispute with regard to properties of respondent as well as petitioners and both are alleging that other party has encroached their property. The respondent has amended the plaint with regard to 'B' schedule property, but she has not amended 'B' schedule in the petition. Further, Advocate Commissioner was already appointed in E.A.No.4311 of 2011 in E.P.No.437 of 2008 and Advocate Commissioner has filed report. Once again the Advocate Commissioner need not be appointed to measure 'B' schedule property and the present I.A. was dismissed with regard to 'B' schedule property. E.A.No.4311 of 2011 for re-issue of warrant of commission to measure 'A' schedule property was dismissed by the order dated 19.07.2012 as the respondent failed to furnish boundaries. In the present application, the respondent has given



C.R.P.(PD)No.4178 of 2015

boundaries of her property described in 'A' schedule property. The learned Judge considering earlier order dated 19.07.2012 made in E.A.No.4311 of 2011 and also boundaries given by the respondent, appointed Advocate Commissioner to inspect and measure 'A' schedule property with the help of Taluk surveyor and also to find out encroachment, if any made and file a detailed report. There is no error in the said reason given by the learned Judge for appointment of Advocate Commissioner warranting interference by this Court.

11.For the above reasons, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

10.01.2022

Index : Yes/No
Internet: Yes/No

kj



WEB COPY



C.R.P.(PD)No.4178 of 2015

V.M.VELUMANI,J.

Kj

To

XV Assistant Judge
City Civil Court, Chennai.

C.R.P.(PD)No.4178 of 2015
and M.P.No.1 of 2015

10.01.2022

8/8