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C.R.P(PD)No.1171 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2022

CORAM:

Mr. JUSTICE N.SESHASAYEE

C.R.P(PD)No.1171 of 2022
and C.M.P.No.6173 of 2022

1.Annapurani
2.TheynMozhi
3.Ezhil Arasi
4.Niraimathi

... Petitioners

Vs.

K.R.Venkataraman

...Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India, to give a direction to the learned Principal District Judge at Chengalpattu to decide the application for appointment of advocate Commissioner filed in I.A.No.2 of 2021 in A.S.No.35 of 2017 first and till such time not to decide the main appeal suit.

For Petitioners

: Mr.V.Lakshminarayanan
for S.Ruban Prabhu

ORDER

The revision petitioner herein is the defendant in O.S.No.15 of 2009 on the

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file of the Subordinate Court, Tambaram. The suit is laid seeking a decree for mandatory injunction against the defendant to remove a certain superstructure put up in the suit property. This suit came to be decreed, challenging which the defendant has preferred A.S.No.35 of 2017. In the appeal suit, the defendant has taken out two applications: one is I.A.No.1 of 2021 for receiving additional evidence under Order 41 Rule 27 C.P.C. and the other is I.A.No.2 of 2021 for appointing a Commission for local inspection. Both these applications were ordered to be heard along with the appeal.

2.Learned counsel for the revision petitioner submitted that I.A.No.2 of 2021 for appointment of a Commission may have to be disposed of earlier to the final hearing of the appeal, and hence he is before this Court. Elaborating the facts of the case, the learned counsel submitted that there are two plots involved in this litigation, one is plot No.604 and the other is plot No.606. According to the defendant / revision petitioner herein, certain Vasu Naidu was the owner of the plot No:604, that he had applied for necessary sanction from the authority concerned for construction of a residential building in S.No:604, and that before commencing construction, he had taken the help of a surveyor to identify S.No:604, and that this surveyor had identified the adjacent plot in plot No.606 as 604, and trusting the same he put up a



construction in what was shown to him as plot No.604. This construction, according to the revision petitioner was completed in 1987, and the building was duly assessed to property tax by the local body. Subsequently, after the demise of Vasu Naidu, on 29.10.1999, his heirs sold it to the defendant's father. It is in this setting, the plaintiff / respondent herein has laid the suit in O.S.No.15 of 2009 for the relief already stated. Learned counsel added that the suit was originally laid as O.S.No.142 of 2005 before the Sub Court, Chengleput, and that it was laid some twenty years after the construction of the property by Vasu Naidu.

3. Given the facts that are presented before this Court, this Court considers that the first appellate Court ought to take up I.A.No.2 of 2021 for appointment of a Commission earlier to the final hearing of A.S.35 of 2017, since the report of the Commissioner may evoke any objection from parties, which may have to be considered before the appeal is taken up for hearing.

4. Therefore, this Court directs the first appellate Court, in whose file A.S.No.35 of 2017 is pending to hear and dispose of I.A.No.2 of 2021 earlier to the hearing of the appeal. In the eventuality of the Court considering a need to appoint a Commission in I.A.No.2 of 2021, the first appellate Court



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is required to appoint an advocate having reasonable familiarity in the civil side and also who is regular in his appearance before the Court as a Commissioner.

5. This Court is conscious that no notice is ordered to the respondent, since what is herein ordered does affect any of the rights of the respondent/plaintiff.

6. The Civil Revision is disposed of accordingly in the manner indicated above. Consequently, the connected miscellaneous petition is closed. No costs.

06.04.2022

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Note: Office to Issue order copy on 07.04.2022.

To.
The Principal District Judge at Chengalpattu



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N.SESHASAYEE, J.,

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