



C.R.P.(PD).No.2832 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 17.02.2022**

**C O R A M**

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

**C.R.P.(PD).No.2832 of 2021**

**and**

**C.M.P.No.20526 of 2021**

I.John Bosco

...Petitioner/Petitioner/Plaintiff

-V-

N.Ramalingam

...Respondent/Respondent/Defendant

**Prayer:** Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.1210/2018 in O.S.No.625 of 2012 dated 29.09.2018 passed by the Hon'ble Principal District Munsif Court at Alandhur and allow the Revision with cost.

For Petitioner : M/s.M.K.Bhoopathy Rajan

For Respondent : Mr.M.Thangadurai



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## **ORDER**

The defendant and the plaintiff had challenged the dismissal of their application filed for appointing an Advocate Commissioner in I.A.No.1210 of 2018 in O.S.No.625 of 2012 on the file of the Principal District Munsif Court at Alandhur. The petitioner had filed a suit O.S.No.625 of 2012 for a mandatory injunction directing the defendant, his men, agent, servants, representatives and all other persons to demolish the unfinished house construction of an extent of 400 sq.ft. in the eastern side of the plot no.468 belonging to the plaintiff.

2. The case of the plaintiff is that the defendant and the plaintiff had purchased plots of land from the Tamil Nadu Secretariat Staff Co-operative Housing Limited. The petitioner had purchased plot No.468 within specified boundaries and the defendant had purchased plot no.467. The plaintiff would contend that the defendant while putting up his construction has



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encroached into the petitioner's property and put up construction to an extent of 400 Sq.ft and therefore, the suit.

3. The defendant in his written statement has stated that his construction has taken place only in plot no.467 which he has purchased and has not extended into the plaintiff's property. After the evidence was over and matter was posted for arguments, the petitioner has come forward with the impugned petition seeking to appoint an Advocate Commissioner to inspect plot nos. 466, 467 and 468 in order to prove as to whether the properties that are being enjoyed by the respective owners are according to the measurements in the respective allotment orders. This application was moved considering the fact that the application that has been moved on the ground that the defendant had deposed that he has constructed his house only within his plot and therefore, the necessity for an Advocate Commissioner.



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4. The respondent/defendant had filed a counter inter alia contending that the application was highly belated and the prayer to measure Plot No.466 is not maintainable, since the owner of plot no.466 is not a party to the proceedings, he would contend that the suit itself is a vexatious one. The learned Judge by his order dated 29.09.2021 was pleased to dismissed the said application stating that the application is one for gathering evidence with reference to the possession. Challenging the said order the plaintiff is before this Court.

5. Heard the learned counsels on either side.

6. It is no doubt true that the application has been filed at a very belated stage. However the suit has been filed for a mandatory injunction directing the defendant to remove a construction put up in the plaintiff's property. The respondent/defendant on the other hand would contend that he has put up his construction entirely within his property and that



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he has not encroached into the plaintiff's property. In order to bring about a quietus to the issue an Advocate Commissioner may be appointed.

7. This Court is of the view that the learned Principal District Munsif Court at Alandhur ought to have allowed the application and appointed an Advocate Commissioner to note down the physical features and measure the suit properties as well as the property of the defendant with the respective allotment letters and agreements.

8. In view of the above the Civil Revision Petition is allowed and the order of the Trial Court is set aside. The Trial Court shall appoint an Advocate Commissioner to measure the suit property with the help of the allotment letters and agreements standing in the name of the plaintiff and the defendant with reference to their respective properties with the help of a Surveyor and note down the physical features of the suit properties.



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9.The Advocate Commissioner who shall be appointed shall submit his report within a period of 10 days from the date of receipt of the warrant and the learned counsel for the petitioner has informed that the suit is at the stage of argument. Therefore, once the report is received the learned Principal District Munsif Court at Alandhur shall proceed to hear the arguments and pass judgment preferably within a period of one month. No costs, consequently, the connected miscellaneous petition is closed.

**17.02.2022**

Index : Yes/No  
Internet : Yes/No  
shr

To

The Hon'ble Principal District Minsif Court  
at Alandhur.



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**P.T. ASHA, J,**

shr

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