



C.R.P(PD)Nos.2977 & 2982 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)Nos.2977 & 2982 of 2021

and

C.M.P.No.21266 of 2021

N.Elumalai

..Petitioner in both CRPs.

Vs.

K.G.Mahan

..Respondent in both CRPs.

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed by the learned Principal District Munsif, Alandur in I.A.Nos.80 & 81 of 2021 in O.S.No.781 of 2011 dated 20.11.2021.

For Petitioner : Mr.M.Rajasekar

COMMON ORDER

The petitioner, who is the defendant in OS.No.781 of 2011 challenges the order of the Trial Court, directing issuance of summons to the witnesses at the instance of the plaintiff.



C.R.P(PD)Nos.2977 & 2982 of 2021

2.The suit was laid by the plaintiff seeking declaration that he is the absolute owner of the 'A' schedule property and for mandatory injunction, directing the defendant to remove the encroachments made by the defendant over the 'B' schedule property, which according to the plaintiff is a public road.

3.The contention of the defendant is that the 'B' schedule property is the absolute property of the defendant and the plaintiff has no right of way over the same. When the trial began, the plaintiff has come up with applications, seeking issuance of summons to examine the Assistant Engineer, CMWSSB, Zone XV, Sholinganallur, Chennai – 600 119 and the Assistant Commissioner, Ward No.197, Zone XV, Sholinganallur, Corporation of Chennai as witnesses, calling upon them to produce certain documents, which would, according to the plaintiff, demonstrate that the suit 'B' schedule property is a public road.

4.These applications were resisted by the defendant contending that the fact that the Panchayat has laid a road would not make the 'B' schedule



property a public road. It is also contended that in view of the earlier direction for early disposal of the suit, these applications should not be entertained. The Trial Court, upon consideration of the rival pleadings concluded that this is a fit case where the plaintiff should be given an opportunity to place the best evidence before Court. The Trial Court therefore, allowed the applications.

5.Mr.M.Rajasekar, learned counsel appearing for the petitioner would vehemently contend that the plaintiff cannot seek aid of the Chennai Corporation and the Chennai Metro Water Supply and Sewarage Board to prove that 'B' schedule property is a public road. The learned counsel would also rely upon the direction issued by this Court in CRP(PD)No.611 of 2014, directing the Trial Court to dispose of the suit at an early date.

6.No doubt, there is a direction by this Court for early disposal of the suit in a revision that arose out of an order, dismissing an application for appointment of advocate Commissioner. But, that by itself will not enable the defendant to prevent the plaintiff from placing the best evidence before Court.



C.R.P(PD)Nos.2977 & 2982 of 2021

A party to a proceeding is entitled to place the best evidence before Court and in doing so, he or she can seek aid of the Court, by issue of summons, where Official witnesses are sought to be examined.

7.I do not see any ground on which, such summons to Official witnesses could be refused more so in a case where the question that is to be decided is whether the property is a public road or not. Therefore, I do not see any reason to interfere with the order of the Trial Court, directing issuance of summons to the Official witnesses. These civil revision petitions therefore, fail and they are accordingly, dismissed. Consequently, connected miscellaneous petition is closed.

04.01.2022

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Internet:Yes
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C.R.P(PD)Nos.2977 & 2982 of 2021

To-

The Principal District Munsif Court,
Alandur.



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C.R.P(PD)Nos.2977 & 2982 of 2021

R.SUBRAMANIAN, J.

KKN

C.R.P(PD)Nos.2977 & 2982 of 2021
and
C.M.P.No.21266 of 2021

04.01.2022