



C.R.P.Nos.164 and 168 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 20.07.2022

Delivered On : 14.10.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.Nos.164 and 168 of 2020

C.R.P.No.164 of 2020

Race View Colony Welfare Association,
Rep. by its President E.L.Ashok Anand,
No.1, Main Road Race View Colony,
Guindy, Chennai – 600 0032.

... Petitioner/Appellant/
Respondent/Defendant

-VS-

Ajay K. Agarwal,
Rep by his Power Agent
Ranvir R. Shah,
15, Race Course Road, Guindy,
Chennai – 600 032,
Now at New No.13, Old No.9,
Kasturi Ranga Road 1st Street,
Kasturi Estate, Alwarpet,
Chennai – 600 018.

... Respondent/Respondent/
Petitioner/Plaintiff

PRAYER: Civil Revision Petition had been filed under Article 227 of the Constitution of India, praying to set aside the order dated 04.10.2019 passed in C.M.A.No.39 of 2019 by the learned XVII Additional Judge, City Civil Court, Chennai.



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C.R.P.No.168 of 2020

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... Petitioner/Appellant/
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... Respondent/Respondent/
Petitioner/Plaintiff

PRAYER: Civil Revision Petition had been filed under Article 227 of the Constitution of India, praying to set aside the order dated 04.10.2019 passed in C.M.A.No.38 of 2019 by the learned XVII Additional Judge, City Civil Court, Chennai.

For Petitioner in both cases	: Mr.Venkatesh Mahadevan
For Respondents in both cases	: Ms.P.V.Rajeswari for M/s.K.Thangarasu



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ORDER

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Both the Civil Revision Petitions had been filed seeking to set aside the orders dated 04.10.2019 passed in C.M.A.Nos.38 and 39 of 2019 by the learned XVII Additional Judge, City Civil Court, Chennai.

2.The sole Defendant in the suit in O.S.No.5794 of 2016 is the Petitioner. The suit in O.S.No.5794 of 2016 was filed by the Respondent herein for bare injunction against the Petitioner herein/Race View Colony Welfare Association who sold the property is no more the owner of the suit property. The suit had sought two reliefs – (i) seeking permanent injunction against the sole Defendant not to interfere with the peaceful possession and enjoyment of the suit property by the Plaintiff and (ii) the Defendant shall not interfere with the construction of the compound wall in the suit property. Construction of compound wall is on the northern side of the wall. The Plaintiff had filed two Interlocutory Applications viz., I.A.No.14517 of 2016 in O.S.No.5794 of 2016 seeking interim injunction against the Defendant/Respondent not to interfere with the peaceful possession and enjoyment of the suit property and I.A.No.14518 of 2016 in



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O.S.No.5794 of 2016 seeking interim injunction against the Defendant not to interfere with the construction of compound wall on the northern side of the property. After due enquiry, both the Interlocutory Applications were allowed by the learned VII Assistant Judge, City Civil Court, Chennai. Aggrieved by the same, the sole Defendant had filed C.M.A.Nos.38 of 2019 and 39 of 2019 before the learned XVII Additional Judge, City Civil Court, Chennai. The learned XVII Additional Judge, City Civil Court, had as per the judgment on 04.10.2019 dismissed both the Civil Miscellaneous Appeals. Aggrieved by the same, these Civil Revision Petitions had been filed seeking to set aside the order passed by the learned XVII Assistant Judge, City Civil Court, Chennai and confirm the order passed by the learned VII Assistant Judge, City Civil Court, Chennai.

3.It is the contention of the leaned Counsel for the Petitioner that the suit property consisting of larger extent of 2.52 Acres came to be divided between the father and son. The suit was filed before the Original Side of this Court in C.S.No.50 of 1953. There was compromise between the father and son and compromise decree was passed by the Hon'ble High Court



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Original Side on 14.12.1954. As per the compromise decree, both the parties viz., Plaintiff and Defendant/father and son agreed to provide 30 feet road running from East to West dividing two properties of the father and son. Thereby, each party to the decree had to leave 15 Feet pathway in East to West. It is the further contention of the learned Counsel for the Petitioner that the Petitioner herein are the residents of the street and that the Respondent is attempting to encroach on the 30 feet road which is named by the Corporation as Race View Colony Second Street. It is the further contention of the learned Counsel for the Petitioner that the 30 feet road was in existence for more than 40 years. The Petitioner is an Association of Residents Welfare Association and 300 houses are using the 30 feet wide road. The earlier suit filed by the Petitioner in O.S.No.7584 of 2008 before the VII Assistant Judge, City Civil Court, Chennai wherein the Defendants were (1) Chennai Metropolitan Development Authority rep. by its Member Seretary; (2) Corporation of Chennai Rep. by its Commissioner; (3) The Tahsildar, Guindy-Mambalam Taluk; (4) R.K.Industries; (5) Ranjit P. Shah; (6) Meenakshi K. Shah; (7) K.K.Agarwal; (8) Pushpa K. Agarwal; (9) Ranveer R. Shah; (10) Ajay Agarwal and P.S.Apparels Rep. by its Partner



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Mr.Ranvir Shah. The learned Counsel for the Petitioner invited the attention of this Court to the written statement filed by the second Defendant/Corporation of Chennai in the suit in O.S.No.7584 of 2008 in which it was stated by the Defendants as follows:

“6.The Defendant submit that at present the width of the disputed road portion is 18 feet. The office of Mambalam-Guindy Taluk has been requested to verify the actual width of the road and it is found that it has been encroached, action shall be taken to remove the same.

7.This Defendant submit that the public have been using this common public road from the time it was formed. The actual width of the road shall be ascertained from the record available at Taluk Office.

8.This Defendant submits that attempts were made by the Respondents 4 to 11 to construct a wall across Race View Colony II Street. But action was taken to remove the construction materials, cement parts etc., and constant vigil is kept on to prevent any such encroachment.

14.This Defendant submit that if the Respondents 4 to 11 put up construction, closing the entrance to Race View Colony II Street, the residents and the common public will be affected.”

4.The Respondent herein had already encroached the pathway to an extent of 12 feet out of 15 feet donated by him as per 1954 decree. In this suit, an Advocate Commissioner was appointed to note down the physical



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features of the street. The report of the Advocate Commissioner also was filed in the suit in O.S.No.5794 of 2016 in which Advocate Commissioner had filed report regarding Race View Colony II Street along with sketch. He had only stated that it is a wide road in the Race View Colony II Street but he had not given the measurement. Despite such report, the trial Court had granted injunction in favour of the Plaintiff/Respondent. Therefore, Defendant Association had filed Civil Miscellaneous Appeal. It is the contention of the Petitioner herein that 30 feet road had been encroached by the Plaintiff and the Plaintiff had been granted injunction against the Respondents not to interfere with the peaceful possession and enjoyment and not to interfere with the construction of the Plaintiff. The Civil Miscellaneous Appeals filed by the Defendants were dismissed. Aggrieved by the same, the Petitioner is before this Court by filing these Civil Revision Petitions.

5.The learned Counsel for the Petitioner submitted that the Plaintiff in the suit is the Respondent in these Civil Revision Petitions. The Petitioner dragged the Respondent to Court. Therefore, the Respondent had filed suit



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for bare injunction. It is the contention of the learned Counsel for the Respondent, who is the Plaintiff in the suit that the earlier decree in 1954 was acted upon by the parties to the suit. Both of them had given 15 feet of the land each as per the submission of the learned Counsel for the Petitioner in the Civil Revision Petitions where the road in question had 30 feet width which is the prime consideration. It is proved by the Plaintiff. The Plan of the Advocate Commissioner did not claim that there was encroachment. There is no dispute regarding the ownership of the property enjoyed by the Plaintiff. The Plaintiff in the suit had put up construction to protect his property by putting up compound wall which was resisted by the Revision Petitioner herein who is the Defendant in the suit. Earlier one Patel Exports (India) filed a suit in O.S.No.4906 of 1996 in which Plaintiff herein is Defendant No.4. In the suit filed by Patel Exports (India), the contention of the Patel Exports as Plaintiff was rejected by the learned Judge in O.S.No.4906 of 1996. The suit filed by Patel Exports (India) was dismissed wherein it was clearly stated that the decree in Civil Suit No.50 of 1953 was not implemented by both parties and their successors in interest. Subsequently, the Defendant in the suit had filed another suit in



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O.S.No.7584 of 2008 which was also dismissed for non-prosecution. The Petition filed to condone the delay in restoring the suit was also dismissed in I.A.No.5401 of 2012. Earlier to the filing of the suit, the Defendant/Petitioner herein had filed Writ Petition in W.P.No.17530 of 2001 in which Chennai Metropolitan Development Authority by its Member Secretary was the first Respondent; Corporation of Chennai Rep. by its Commissioner was the second Respondent; Executive Engineer, Corporation of Chennai, was the third Respondent; Tahsildar, Mambalam-Guindy Taluk was the fourth Respondent; Inspector of Police, J-3, Guindy Police Station was the fifth Respondent; R.K.Industries, Rep. by its Partner was the sixth Respondent and the Plaintiff in the suit/the Respondent in these Civil Revision Petitions was the 12th Respondent. The Writ Petition was dismissed as not pressed and subsequently, the Defendant in the suit Race View Colony Welfare Association had filed O.S.No.7584 of 2008 which was also dismissed for non-prosecution.

6.It is the contention of the learned Counsel for the Respondent that the Petitioner has no case at all. The Race View Colony Welfare



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Association had filed Civil Miscellaneous Appeals in C.M.A.Nos.38 and 39 of 2019 which were also dismissed. Therefore, the Petitioner has no case at all. It is nothing but only to harass the Respondent/Plaintiff in the suit. These Civil Revision Petition lack merits and it has to be dismissed. If at all there are encroachment, the Corporation of Chennai and Chennai Metropolitan Development Authority has its power to remove the encroachers even to demolish the structures encroaching the street as per the street plan. Therefore, the Revision Petitioner, who is the Defendant in the suit has no right or *locus standi* to interfere in putting up construction by the Plaintiff in the suit or to interfere in the peaceful possession and enjoyment of the property which he had purchased through valid sale deed.

7.On perusal of the documents filed along with these Civil Revision Petitions, it is found that the contention of the Petitioner herein cannot at all be accepted. It is to be noted that the learned VII Assistant Judge, City Civil Court, Chennai, on consideration of the documents filed by the respective parties and after hearing both sides only, had granted interim injunction. The learned XVII Additional Judge, City Civil Court, Chennai,



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had dismissed the Civil Miscellaneous Appeals.

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8. On consideration of the rival submissions and on perusal of the documents, it is found that the the Petitioner/Defendant in the suit is the Plaintiff in O.S.No.7584 of 2008 which was left for dismissed for non-prosecution. Prior to that suit, the Defendant in the suit in O.S.No.5794 of 2016 had filed Writ Petition No.17530 of 2001 which was dismissed as not pressed. Therefore, the contention of the learned Counsel for the Petitioner herein cannot be accepted. In the light of the documents filed along with these Civil Revision Petitions by the Respondent herein and in the light of the above, the contention of the learned Counsel for the Petitioner herein cannot at all be accepted, particularly, in the light of the discussion by the learned VII Assistant Judge in the judgment in O.S.No.4906 of 1996 in which the Respondent herein was also a Defendant. The contention of the learned Counsel for the Petitioner is found unacceptable. In the light of the W.P.No.17530 of 2001 and in the light of the suit filed by the Defendant herein against the Petitioner herein in which there were 13 Defendants who were Respondents in the Writ Petition. Therefore, it is found that the



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attempt of the Petitioner is unacceptable in the eyes of law. If at all the Petitioner herein has a claim over the public road, he can move the appropriate authority – either the Corporation of Chennai or Chennai Metropolitan Development Authority seeking to remove the encroachment on the street viz., Race View Colony II Street and he cannot interfere with the peaceful possession and enjoyment of the property purchased by the Plaintiff in O.S.No.5794 of 2016.

9.In the light of the above discussion, both the Civil Revision Petitions are liable to be dismissed.

In the result, both the Civil Revision Petitions are dismissed.

The learned VII Assistant Judge, City Civil Court, Chennai is directed to proceed with the trial and dispose of the suit in O.S.No.5794 of 2016 within a period of three months from the date of receipt of a copy of this order. During trial, the Plaintiff as well as the Defendant can mark documents regarding the width of the road/street which is claimed to be



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used by the Residents Welfare Association. Also the Defendant can
summon the officials of Corporation of Chennai regarding the width of the
street and encroachment if any. No costs.

14.10.2022

SRM

Index : Yes / No

Internet : Yes / No

To

- 1.The VII Assistant Judge,
City Civil Court, Chennai.
- 2.The XVII Additional Judge,
City Civil Court, Chennai.



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SATHI KUMAR SUKUMARA KURUP., J.

SRM

**Order made in
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