



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2022

CORAM

WEB COPY

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

C.R.P.(MD)No.602 of 2020
and C.M.P(MD) No.3923 of 2020

Shanthi

... Petitioner/Respondent/
Defendant

Vs.

1.Subbulakshmi
2.Gururaman

... Respondents/Petitioners/
Plaintiffs

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in fair and decreetal order passed in I.A.No.906 of 2019 in O.S.No.249 of 2018 dated 13.03.2020 on the file of the Principal District Munsif Court, Dindigul.

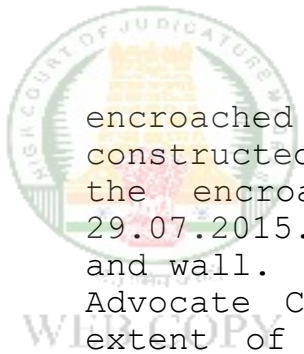
For Petitioner : Mr.V.Ilanchezian

ORDER

The defendant has challenged the order passed by the learned Principal District Munsif, Dindigul in allowing the petition filed by the plaintiff for appointing an Advocate Commissioner to note down the physical features of the property, measure the same with the help of the Village Administrative Officer and Surveyor and to submit a report regarding the encroachment made by the defendant along with the plan.

2.Brief facts of the case are as follows:

The plaintiff has filed the suit for declaration and for a mandatory injunction directing the defendant to remove the construction put up by them in the property, which has been described in the schedule to the plaint. Pending suit the plaintiff has also filed an application for appointing an Advocate Commissioner to note down the physical features of the property, measure the scheduled mentioned property with the help of the Village Administrative Officer and Surveyor and to identify the encroachment made by the defendant and to submit a report and plan thereto. The plaintiff's case is that he is the owner of an extent of 2835 sq ft in S.No.163/6 and 163/13, which is situated in plot No.11. It is his further case that an extent of 54 sq.ft i.e., 18 feet north-south on the west and three feet east-west has been



encroached by the defendant and 13 feet high house has been constructed. The plaintiff's case is that he had come to know about the encroachment only when the Surveyor had measured it on 29.07.2015. A three feet gap had been left for maintaining his house and wall. Therefore, the plaintiff has sought for appointment of an Advocate Commissioner to measure his property and note down the extent of the encroachment. The said application, despite the objection of the defendant, has been allowed.

3.The learned counsel appearing for the petitioner would only argue that the question as to whether the defendant had encroached into the suit property or not can be concluded only after the trial of the suit and at this juncture, the Court has totally erred in appointing an Advocate Commissioner. Therefore, he would seek to have the order set aside.

4.Heard the learned counsel appearing for the petitioner and perused the materials available on record.

5.It is the specific case of the plaintiff that when he surveyed his land, the encroachment has come to the light and therefore, he had sought to have the Advocate Commissioner appointed to note down the physical features of his property, its measurement and to verify the extent of the encroachment as well as the area of the encroachment. In order to get a decree, this fact has to be first established. The defendant has already put up a construction. It is the case of the plaintiff that he had come to know that his property has been encroached into only when he had undertaken to survey his land. Therefore, it would be in the interests of either party to have the property measured to verify if there is an encroachment or not. I do not find any error in the order passed by the learned Judge, particularly, considering the fact that the suit has been filed for mandatory injunction to remove the encroachment made in his property. Therefore, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

gns

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

The Principal District Munsif, Dindigul.

WEB COPY

RK(07/02/2022) 3P 2C

C.R.P. (MD) No.602 of 2020
19.01.2022