



C.R.P.No.4060 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.4060 of 2023

and

C.M.P.No.24825 of 2023

P.S.Gurusamy

... Petitioner

-Vs-

1. Shree Kalaivani Vidyalaya
rep. by its Correspondent
Mr.S.Thangakrishnan

2. The Secretary,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai-600 005.

3. The Commissioner,
Corporation of Chennai,
Chennai-600 003.

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 06.12.2019 passed in I.A.No.1 of 2019 in A.S.No.299 of 2014 on the file of learned II Addl. City Civil Court, Chennai.



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For Petitioner : Mr.A.D.Janarthanan

ORDER

Challenging the impugned order passed in I.A.No.1 of 2019 in A.S.No.299 of 2014 passed by the learned II Addl. Judge, City Civil Court, Chennai, the Revision Petitioner/appellant preferred this Civil Revision Petition.

2. Since the relief is claimed challenging the order passed by the appellate judge, notice to the respondents is dispensed with.

3. Before the trial court, the Revision Petitioner is the 1st defendant in a suit filed in O.S.No. 7286 of 2010 by the 1st respondent/plaintiff for the relief of permanent injunction as if the appellant/1st defendant encroached the suit property. That suit was contested by the 1st defendant. On hearing both sides, the suit was decreed in favour of 1st respondent/plaintiff. Against which, the 1st defendant preferred an appeal. During the pendency of appeal proceedings, he filed an application for



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appointment of advocate commissioner to note down the physical features in order to establish the fact that he enjoyed his own property and he has not made any encroachment. Furthermore, as the appellant, he has to establish his defence. Hence, he filed an application for appointment of advocate commissioner to note down the physical features, more particularly, to prove the disputed plot No.39 belongs to him. But, the said application was dismissed by the appellate judge holding that already the extension of the suit property is admitted by both parties and the 1st respondent/plaintiff has not claimed any right over the property in plot No.39. Hence, there is no necessity to appoint an advocate commissioner as the disputed property is a common lane. Challenging the said findings, the Revision Petitioner/appellant preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner/appellant would submit that before the trial court, he has not taken steps to appoint an advocate commissioner for the reason that he established his defence, but the trial judge failed to appreciate the said fact and erroneously decreed the suit in favour of 1st respondent/plaintiff. Now, taking advantage of the decree, the 1st respondent/plaintiff is trying to encroach the suit property by



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way of using passage of their school as if the said property is a road and using by public. Hence, the necessity arose for him to file the said application for appointment of advocate commissioner, but the same was not appreciated by the appellate judge. However, he is having valid defence to prove his case. Therefore, he prayed to set aside the findings of the appellate judge.

5. Records perused. On considering his submissions and on perusal of records, it would reveal that the suit was filed by the 1st respondent/plaintiff in the year of 2010, which was represented by the Correspondent. According to the plaintiff, there is an encroachment made by the 1st defendant in a common pathway. Though the objections raised by him, the suit was decreed in favour of plaintiff. As per the observation made by the trial judge, the 1st defendant has no right to encroach a public road. Against which, now the appeal is filed. As per his defence, he has not encroached any of the pathway and he is enjoying his own property only. To prove the same, he wanted to appoint an advocate commissioner, but the same was denied by the appellate judge. Even the appeal proceedings also amounting to continuation of suit. So, the Revision Petitioner/1st



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defendant is entitled to prove his defence by all means and one such attempt to disprove the plaintiff's contention about the encroachment, he is entitled to establish the same, for which he filed the said application. Hence, the Advocate Commissioner can be appointed. But, the said legal proposition was not properly appreciated by the appellate judge and erroneously dismissed the application, as such is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the findings rendered by the appellate judge in I.A.No.1 of 2019 in A.S.No.299 of 2014 is set aside and the said application is ordered to be allowed. The appellate judge is directed to appoint an advocate commissioner within a period of two weeks from the date of receipt of copy of this order by giving notice to the other side and after adducing physical features, the appellate judge is directed to dispose the case as per manner known to law. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Speaking Order : Yes/No
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To
II Addl. Judge, City Civil Court,
Chennai.



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T.V.THAMILSELVI, J.

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