



C.R.P. No. 3612 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 3612 of 2023

and

C.M.P.No. 22606 of 2023

Baskaran,
S/o. Baggiyam Mudaliar

... Petitioner

Versus

Sundaramoorthy,
S/o. Baggiyam Mudaliar

... Respondent

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the fair and final order dated 21.07.2023 made in I.A.No.85 of 2022 in O.S.No. 47 of 2018 on the file of the learned District Munsif cum Judicial Magistrate, Arcot, Vellore District.

For Petitioner : Mr.R.Vasudevan



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ORDER

WEB COPY The Revision Petitioner herein is the plaintiff filed a suit in O.S.No.47 of 2018 seeking for the relief of permanent injunction and to prove the act of waste committed by the defendant, he has also filed an Interlocutory Application in I.A.No. 85 of 2022 to appoint an advocate commissioner to measure the property and to note down the physical features in order to establish that the respondent was committing acts of waste by diverting drainage sewage into the bathroom and bathroom passage of his living quarters in the ground floor.

2. The said application was contested by the defendant stating that in order to drag on the proceedings, the said application was filed. Though the trial was begin in the year of 2021, he is not cooperating with the proceedings for the past two years. Considering the objections raised by the defendant, the trial judge dismissed the said application stating that to drag on the proceedings, the said application was filed. Challenging the said findings, the plaintiff preferred this Civil Revision Petition.

3. Since the relief is claimed against the trial judge, notice to the



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respondent is dispensed with.

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4. The learned counsel for Revision Petitioner would submit that both plaintiff and defendant are senior citizens and to prove the act of waste committed by the defendant, he filed an application to appoint an advocate commissioner, but the same was not allowed by the trial judge. However, if opportunity is not given to the plaintiff, his right to protect the property will be defeated. Hence, he prayed to set aside the findings of the trial judge.

4. On perusal of records, it reveals that trial was begin in the year of 2021 and the plaintiff was examined as P.W.1 in chief, thereafter, there is no progress in the trial. In the meanwhile, the plaintiff filed an application to appoint an Advocate Commissioner to measure the property. The trial judge has rightly observed that the plaintiff has not properly cooperated to conduct the proceedings, but on seeing the relief claimed in the plaint, the report of advocate commissioner is necessary to adjudicate the issue between the parties, more particularly, with regard to the act of waste committed by the defendant by keeping drainage water and if physical features are not established before the trial court, the issue between the parties cannot be adjudicated properly and fairly. Therefore, the order



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passed by the trial judge is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the findings of the trial judge in I.A.No.85 of 2022 is set aside and the said application is ordered to be taken on file. The trial judge is directed to appoint an Advocate Commissioner with a direction to file a report within a period of two weeks and based on the Commissioner's report, conduct trial and dispose the case on merit within a period of three months from the date of receipt of copy of this order. Both parties are directed to cooperate with the trial proceedings. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

District Munsif cum Judicial Magistrate,
Arcot.



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T.V.THAMILSELVI, J.

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