



C.R.P(MD)No.984 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.04.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.984 of 2023

and

CMP(MD)No.4518 of 2023

Vasantha (Died)

... Petitioner/2nd Petitioner/2nd Plaintiff

Vs.

Ravi

...Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 23.01.2023 passed in I.A.No.8 of 2022 in O.S.No.7 of 2009 on the file fo the II Additional District Munsif Court, Tiruchirappalli, and allow the present Civil Revision Petition.

For Petitioner : Mr.M.Saravanan

For Respondent : Mr.Shangar Murali

ORDER

This petition has been filed to set aside the fair and decreetal order dated 23.01.2023 passed in I.A.No.8 of 2022 in O.S.No.7 of 2009 on the file fo the II Additional District Munsif Court, Tiruchirappalli.

2.The petitioner is the plaintiff before the II Additional District Munsif Court, Tiruchirappalli. The petitioner is aggrieved by the



C.R.P(MD)No.984 of 2023

impugned order dated 23.01.2023 passed by the Additional District Munsif Court, Tiruchirapalli, in IA.No.8 of 2022 in O.S.No.7 of 2009.

3.By the impugned order, the II Additional District Munsif Court, Tiruchirapalli, has dismissed the above application filed by the petitioner under Order XXVI Rule 9 of CPC for appointing an Advocate Commissioner and to give a report.

4.It is submitted that the application was filed after the commencement of trial and after conclusion of cross-examination of plaintiff witness and at the stage of defendant witness. It is submitted that the Trial Court has committed a grave error in dismissing the application filed for appointment of an Advocate Commissioner. The learned counsel for the petitioner submits that the defendant had filed I.A.No.587 of 2009 for appointing an Advocate Commissioner and that application was allowed. However, the defendant failed to pay the necessary charges to the Advocate Commissioner and thus, the order passed in I.A.No.587 of 2009 was lapsed. That apart, it is submitted that the respondent/defendant also filed I.A.No.29 of 2017 to revive I.A.No.587 of 2009 which was closed in the year 2018 for want of prosecution.



C.R.P(MD)/No.984 of 2023

Under these circumstances, the petitioner was constrained to file I.A.No. 8 of 2022 belatedly after the commencement of trial.

5.The learned counsel for the petitioner has attempted to draw attention to paragraph 6 of the plaint and paragraph 7 of the written statement. They reads as under:-

Paragraph 6 of the Plaint	Paragraph 7 of the Written Statement
6.The plaintiff humbly prays that the description of property in the registered sale deed reveals that the southern wall of the suit property is the exclusive wall of the plaintiff and her predecessor in title. The adjacent owner cannot claim any interest in the same. Moreover, there is a cornice in the southern wall protruding 1 feet on the south. The same is in existence for a very long time and the same cannot be disputed by any one. The plaintiff having succeeded to the estate of deceased as Co-owner is in peaceful possession and enjoyment of all the rights possessed enjoyed and left by the deceased. The plaintiff begs leave of this Hon'ble Court to depict the physical features by filing a rough plan which may also be treated as part and parcel of this plaint.	7.The allegations in paragraph 6 are all false, frivolous and the plaintiff is put to strict proof of the same. As the sale in favour of Gopalakrishnan is disputed, the claim of the plaintiff over the southern wall is imaginary. The plaintiff in order to prove the lie and characteristic of the suit property and the property situated on its south has not filed any application for appointment of an Advocate Commissioner. Hence, the defendant has filed an application for appointment of an Advocate Commissioner to note down the suit particularly the wall situated on the north of his property. A mere existence of cornice in the southern wall does not confer any title or possession on the property situated adjacent to it. The roof of the property purchased by the defendant was originally rested on the northern wall of his property. The defendant purchased the property situated at the south of the suit property by virtue of a registered sale deed bearing Registration No. 5482 dated 17.09.2008 from his vendors Thavamani and Sankaranarayanan for valuable sale consideration. After the purchase, the defendant had demolished the then existing superstructure for the purpose of putting up a pucca residential house. While demolishing the then existing superstructure the roof inserted into southern wall of the suit property was also demolished and the stones inserted into the southern wall of the suit property namely the lateral support of the roof of the building purchased by the defendant is still in existence. Therefore, the predecessor in title were enjoying the southern wall of the suit property as a lateral support and the easementary right enjoyed by them has also been transferred in favour of this defendant. The demolition of the building purchased by the defendant is not extinguishing the easementary right of the defendant to rest the beam or roof of his building on the southern wall of the suit property at the time of putting up of new construction. The said easementary right is temporarily suspended and will automatically be revived at the time of new construction. Therefore, the servient owner cannot restrain the dominant owner to remove his lateral support.



C.R.P(MD)No.984 of 2023

6.It is submitted that it is a fit case for interfering with the order passed by the Trial Court. It is submitted that the Trial Court has wrongly dismissed the application for appointment of an Advocate Commissioner.

7.The learned counsel for the respondent would submit that the impugned order is well reasoned and requires no interference. The suit is only for a bare injunction. That apart, it is submitted that there is no dispute regarding the physical features and the description of the property. Therefore, it is submitted that the impugned order does not require any interference.

8.I have considered the argument advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

9.In my view, the impugned order passed by the II Additional District Munsif Court, Tiruchirapalli, does not call for any interference. Therefore, the present Civil Revision Petition is liable to be dismissed. The petitioner has filed the suit only for a bare injunction. If it is a case of the petitioner that the respondent is encroached the property by attempting to rest the roof on the southern side wall of the petitioner's



C.R.P(MD)No.984 of 2023

property, it is open for the petitioner to file appropriate documents, photographs and oral evidence to substantiate the same. The application filed for appointment of an Advocate Commissioner cannot be allowed.

10. With the above direction, this Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

12.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
dss

To

1. The II Additional District Munsif Court,
Tiruchirappalli.
2. The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD)No.984 of 2023

C.SARAVANAN,J.

dss

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12.04.2023