



CRP.No.659 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

CRP.No.659 of 2022
and CMP.No.3391 of 2022

1.Junaidha Nachitar
2.Syed Johara Beevi

... Petitioners

Vs

1.Haja Abdul Hameed Marakayar
2.Fathima Ayeesha Nachiyar

... Respondents

Prayer :- Civil Revision Petition filed under Article 226 of the Indian Constitution praying to set aside the fair and decreetal order made in I.A.No.2 of 2019 in O.S.No.41 of 2019, dated 20.10.2001 passed by the learned District Munsif, Nagapattinam.

For Petitioners : Mr.S.Patrick

For Respondents : Mr.P.Dineshkumar



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ORDER

This civil revision petition arises against the order passed by the learned District Munsif, Nagapattinam in I.A.No.2 of 2019 in O.S.No.41 of 2019.

2. The suit in O.S.No.41 of 2019 had been presented for the relief of mandatory injunction, directing the respondents herein to remove the compound wall that had been constructed by the respondents/defendants encroaching upon the plaintiffs' property, and also for permanent injunction restraining the respondents/defendants from interfering with the peaceful possession and enjoyment of the property by the petitioners/plaintiffs.

3. It is the case of the petitioners/plaintiffs that they had purchased the property on 06.09.1998 and had been enjoying the property as per the sale deed. The respondents/defendants, who are residing on the northern side of the property, without any right, interest or title over the plaintiffs' property, removed the existing wall and had put up a new wall encroaching the property of the plaintiffs. According to the petitioners, the old compound wall that had been removed is still visible and if an Advocate Commissioner



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is appointed to measure the property, it would become clear to the Court.

This application was resisted by the defendants on the ground that the plaintiffs ought to prove the encroachment only by way of evidences and witnesses, but not in the form of appointment of Advocate Commissioner. The arguments of the respondents/defendants seem to have persuaded the District Munsif who dismissed the application. Hence, this revision.

4.Heard Mr.S.Patrick, learned counsel for the revision petitioners and Mr.P.Dineshkumar, learned counsel for the respondents.

5. In a suit for mandatory injunction which relates to encroachment, the measurement of plaintiff's property and the defendants' property become essential. On measuring the property, if it is found that the compound wall alleged to be newly constructed by the defendants, is within the boundary limits of the plaintiff's property, then the question of probing into mandatory injunction will arise. In case the Court comes to the conclusion, upon scrutiny of the material records, that the defendants' construction is within their boundary limits, then the question of encroachment would not arise. In either case, the measurement of property can be brought about only if a Commissioner is appointed. Therefore, the order of the learned District



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Munsif that there is no necessity for an appointment of an Advocate Commissioner in a suit where allegations of encroachment are made, is unsustainable.

6. It has been held in the judgment of the Supreme Court in ***Haryana Wakf Board Vs Shanti Sarup and Others, (2008) 8 SCC 671***, that in case of dispute with identity of the property, an appointment of Advocate Commissioner/local Commissioner to inspect the property and submit a report is imperative.

7. Following the directions of the Supreme Court cited supra, the order of the learned District Munsif, Nagapattinam dated 20.10.2021 in I.A.No.2 of 2019 in O.S. No.41 of 2019 is set aside.

8. The Court below shall issue warrant to the Advocate Commissioner who is sufficiently experienced in civil side, to inspect the suit property. The Advocate Commissioner is required to measure the property with the help of a surveyor based on the sale deeds of the plaintiffs and the defendants, in respect to the property now in dispute. If possible, the Advocate Commissioner is also required to make a note where the previous



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wall stood and where the present wall stands. It is made clear that the Advocate Commissioner need not mention in his report as to who is in possession of the property. The remuneration to the Advocate Commissioner shall be borne by the plaintiffs.

9. With the above directions, this revision petition stands allowed.

No costs. Consequently, connected miscellaneous petition is closed.

29.04.2024

To:

- 1.The District Munsif
Nagapattinam.
- 2.The Section Officer
VR Section
High Court, Madras.



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V.LAKSHMINARAYANAN,J.,

ds

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