



C.R.P.No.554 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.554 of 2023

and

C.M.P.No.4509 of 2023

Viswambar Mehta

... Petitioner

Vs.

The Commissioner,
Maraimalai Nagar Municipality,
Maraimalai Nagar.

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed by the learned District Munsif at Chengalpattu in I.A.No.1 of 2022 in O.S.No.277 of 2012 dated 23.11.2023.

For Petitioner : Mr.M.Rajasekar

For Respondent : Ms.N.K.Kanthimathi
for Mr.K.Tippu Sultan
Standing Counsel

ORDER



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This civil revision petition is filed to set aside the order passed by the learned District Munsif at Chengalpattu in I.A.No.1 of 2022 in O.S.No.277 of 2012 dated 23.11.2023.

2.The petitioner earlier filed I.A.No.1925 of 2015 in O.S.No.277 of 2012 and an Advocate Commissioner was appointed. The Advocate Commissioner filed an interim report dated 13.11.2019, from which it is seen that the Advocate Commissioner after serving notice to the plaintiff as well as the defendant/Commissioner, Maraimalai Municipality went to the suit property on 19.10.2019 and was waiting there for arrival of the plaintiff to survey and measure the land. Since the petitioner failed to be present, a report was filed before the Trial Court. Thereafter, the petitioner filed I.A.No.1 of 2022 to direct the earlier Advocate Commissioner to remit back the warrant and to appoint fresh Advocate Commissioner, which came to be dismissed. Against which, the present civil revision petition filed.

3.The contention of the learned counsel for the petitioner is that the



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petitioner filed a suit for permanent injunction stating that he is in continuous and uninterrupted possession and enjoyment of the suit property from 28.08.2008, patta stands in his name, the petitioner has put up construction in the suit property and also obtained electricity service connection. Along with the suit, the petitioner filed a sketch showing the sub-division of the property. The Maraimalai Nagar Municipal Authorities attempted to form a road by encroaching into the property of the petitioner and by using influence and power, their encroachment was imminent and hence, the petitioner sent representation to the defendant and filed a suit. He would submit that the finding of the Trial Court in the impugned order is not proper, earlier the Advocate Commissioner only filed an interim report from which it is seen that no inspection conducted and in view of the same, filing of a petition for appointment of fresh Advocate Commissioner is necessary.

4.The learned counsel for the defendant submitted that the petitioner filed a suit on 17.08.2012 and the road already formed on 18.05.2012. She would submit that for the purpose of providing amenities to the general public and the persons who are living in that locality a bitumen road in east-



west direction from the GST road laid after inviting tenders under Tamil Nadu Urban Road Improvement Fund Scheme, 2011-2012. She further submitted that for formation of this road and other roads, the Maramalai Nagar Municipal Authorities obtained administrative sanction in November 2011 and completed the laying of road on 18.05.2012 and as such, there is no work to be executed by the Municipality. She would further submit that the suit filed after formation and laying of road on 18.05.2012 and hence, there is no cause of action to continue with the suit. Further referring to the impugned order, the learned counsel submitted that the Trial Court had given a finding that the physical feature is not necessary in the suit for permanent injunction and the parties cannot be allowed to gather evidence on the guise of Advocate Commissioner's report and plan. Thus, the Trial Court had rightly dismissed the petition.

5.Considering the submissions made and on perusal of the materials, it is seen that the petitioner on the apprehension that his property would be encroached upon by forming a road by the Municipal Authorities, filed a suit on 17.08.2012. It is further seen that laying of road was completed on



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18.05.2012 i.e., three months well before filing of the suit. In view of the same, the apprehension of the petitioner no more exists. Hence, appointment of Advocate Commissioner is not required. Therefore, this Court finds no reason to interfere with the impugned order.

6. Accordingly, the civil revision petition is dismissed and the petitioner can work out the remedy in the manner known to law for his other rights. Consequently, connected miscellaneous petition is closed.

15.04.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

cse

To

The District Munsif,
Chengalpattu.



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M.NIRMAL KUMAR, J.

cse

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