



C.R.P.No.1231 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1231 of 2024

and

C.M.P.No.6482 of 2024

Namasivayam

... Petitioner

Vs.

1.Manjunathan

2.The Executive Officer,
Chinnasalem Town Panchayat Officer,
Chinnasalem & Taluk.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decree made in I.A.No.1052 of 2023 in O.S.No.189 of 2015 dated 10.11.2023 by the Principal District Munsif Court, Kallakurichi.

For Petitioner : Mr.M.John Kennady

For R1 : Mr.V.Gunasekar

For R2 : No appearance



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ORDER

The petitioner as plaintiff filed a suit in O.S.No.189 of 2015 seeking bare injunction for putting up any wall on the eastern side of the property without leaving 1½ feet set back and the second respondent to remove the construction of wall on the eastern side if there is any violation of rules. The petitioner filed I.A.No.1052 of 2023 seeking appointment of Advocate Commissioner to inspect the property, to measure the property of its length, breadth on all sides, the physical features of the property and a rough sketch to be prepared and filed, which was dismissed by the Trial Court.

2.The contention of the learned counsel for the petitioner is that the Trial Court in the impugned order extracted the first respondent's contention that without getting appropriate permission and plan approval, he was continuing with the construction activities and constructed a house. Further, the petitioner's property is on the eastern side and without leaving set back, compound wall was constructed. When such violation was recorded, it would have been appropriate that Advocate Commissioner to be



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appointed for proper appreciation of the facts and disposal of the case, on the other hand the Trial Court dismissed the application. Against which, the present civil revision petition is filed.

3.The learned counsel for the first respondent is that the first respondent purchased the housing site property from the petitioner on 27.08.2003, at that time for the purpose of getting approval and planning permission he requested the petitioner who was the Sub-Registrar in the Registration Department, Salem to give the parent document so that he can apply for approval. But the petitioner had been delaying by giving one reason or other and not handed over the parent document. Later the respondent came to know that the parent document dated 18.02.1999 is still kept pending in SRO, Chinnasalem for the reason that the petitioner had not paid sufficient stamp duty. Since the petitioner not furnished the parent document, the first respondent could not get approval and now for the second time he applied for approval. Further, the petitioner insisted the first respondent to give back the land which was not agreed by the first respondent. Hence, in personal vendetta the petitioner filed the suit as well



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as the interlocutory application. He would further submit that the prayer in the interlocutory application would clearly expose the petitioner's intention for filing the suit. In the interlocutory application, the petitioner sought for measuring the entire property on all sides, make out of the construction of the house, its physical features and rough sketch. He further submitted that the petitioner filing a suit for injunction not to put up the compound wall is not required to ask for physical features of the building. Further, the Trial Court had rightly recorded that the petitioner earlier filed similar petition in I.A.No.1003 of 2019 and the same was dismissed on 23.01.2020 and again for the same prayer, he filed the present interlocutory application in the year 2023. Hence, the impugned order needs no interference.

4.Considering the submissions made and on perusal of the materials, it is seen that the petitioner sold the portion of the property to the first respondent who purchased the same and put up construction. There is some dispute with regard to making available the parent document, for which reason the first respondent was unable to get plan approval and planning permission from the second respondent at that time. Later, it is seen that



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now the first respondent applied for the same. It is further seen that the suit was filed for the reason that wall constructed on the eastern side is without leaving set back but on the other hand, the petition for appointment of Advocate Commissioner is for a different purpose, which is not the case of the petitioner. Hence the Trial Court had rightly recorded the same and dismissed the petition. In view of the same, this Court is not inclined to interfere with the order passed by the learned Principal District Munsif, Kallakurichi in I.A.No.1052 of 2023 dated 10.11.2023.

5.Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed

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Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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M.NIRMAL KUMAR, J.

cse

To

The Principal District Munsif,
Kallakurichi.

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