



C.R.P.No.1396 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2024

CORAM

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.R.P.No.1396 of 2023
and C.M.P.No.9399 of 2023

1. R.Balaji
2. B.Jayanthi

... Petitioners

-VS-

K.S.Anbu

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decretal Order made in I.A.No.3 of 2022 in O.S.No.205 of 2022 dated March 7, 2023 on the file of the Principal District Munisf, Salem.



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WEB COPY For Petitioner : Ms.K.Keerthi
for Mr.P.K.Harinath Babu

For Respondent : Ms.J.Malathi

ORDER

This Civil Revision Petition has been filed against the Order dated March 7, 2023 passed in I.A.No.3 of 2022 in O.S.No.205 of 2022 on the file of 'Principal District Munsif Court, Salem' [hereinafter 'Trial Court'].

2. The revision petitioners herein are the defendants and the respondent herein is the plaintiff before the Trial Court. The respondent / plaintiff filed a Suit in O.S.No.205 of 2022 seeking the relief of permanent injunction restraining the defendants and their men from putting up construction by demolishing / damaging the western side wall of the Suit Property and also seeking the relief of mandatory injunction directing the defendants to repair the damages caused to the interior and exterior of the building of the plaintiff as well as the western wall of the plaintiff in Suit



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property, and for costs.

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3. The revision petitioners who are the defendants before the Trial Court has filed their written statement stating that the north-south wall in question is a common wall belonging to the plaintiff and the defendants and not an exclusive wall as alleged by the plaintiff. Further, the defendants did not cause any damage to the north-south wall as alleged by the plaintiff. Accordingly, they prayed for dismissal of the Suit.

4. During the pendency of the aforesaid Suit, the respondent herein filed a petition in I.A.No.3 of 2022 under Order XXVI Rule 9 and Section 151 of Code of Civil Procedure, 1908 praying to appoint an Advocate-Commissioner to note down the physical features and measure the Suit Property with the help of a qualified surveyor.

5. After hearing both sides, Trial Court allowed the petition and appointed an Advocate-Commissioner to measure the Suit Property with the help of a qualified surveyor and also directed to file a report with plan by April 10, 2023. Aggrieved with the said Order, the defendants therein filed



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this civil revision petition.

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6. Ms.K.Keerthi, learned counsel representing Mr.P.K.Harinath Babu, Counsel on record for the revision petitioners submits that the plaintiff did not plead anything about encroachment in his Plaint. The plaintiff has introduced a new case by way of filing I.A.No.3 of 2022 application seeking appointment of Advocate Commissioner. The Trial Court failed to consider the aforesaid aspect and allowed the application, which is not in tune with law. Accordingly, learned counsel for the revision petitioners prays to allow this Civil Revision Petition.

7. In response to the above arguments, Ms.J.Malathi, learned Counsel for the respondent / plaintiff submits that the defendant's property is situate on the western side of the Suit property. The defendants while demolishing their building, damaged the said western side wall, which exclusively belongs to the plaintiff. The defendants filed written statement wherein they averred that the wall in question is a common wall. Hence, to find out the exact lie and location of the wall, and to find out whether the wall is



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exclusively belongs to the plaintiff as per the plaintiff's case or whether the wall is a common wall as alleged by the defendants, appointment of Advocate-Commissioner along with the surveyor is necessary. The Trial Court after hearing both sides' rightly allowed the petition, and there is no illegality or irregularity in the said Order. Accordingly, she prayed to dismiss the revision petition and confirm the Order passed by the Trial Court.

8. This Court has considered both sides' arguments. As rightly submitted by the learned counsel appearing for the respondent / plaintiff that the question to be decided in this case is whether the wall, as alleged by the defendants, is a common wall or not. To decide the said question, this Court considers that the Suit property needs to be measured, and for that purpose, Advocate-Commissioner along with surveyor is absolutely necessary in this case. Hence, there is no illegality or irregularity with the Order passed by the Trial Court. This Court does not find any merit in the Civil Revision Petition and therefore, it must fail.



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9. Accordingly, this Civil Revision Petition is dismissed. Considering the nature of the case there shall be no Order as to costs. Consequently, the connected civil miscellaneous petition is closed.

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Index : Yes

Internet : Yes

Neutral Citation: Yes

To

The Principal District Munisf, Salem.



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R.SAKTHIVEL,J

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