



C.R.P.(PD)No.2999 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **19.10.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

**C.R.P.(PD)No.2999 of 2024
and C.M.P.No.16089 of 2024**

K.Ganesan

.. Petitioner

Vs

S.Lakshmi

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 08.01.2024 made in I.A.No.2 of 2023 in O.S.No.501 of 2015 on the file of the Principal District Munsif Court at Alandur.

For Petitioner : Mr.Jagadish
for Mr.K.S.V.Sethuraman

For Respondent : Mr.V.Manisekaran, caveator



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ORDER

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This civil revision petition arises against the order passed by the learned Principal District Munsif at Alandur in I.A.No.2 of 2023 in O.S.No.501 of 2015 dated 08.01.2024.

2. O.S.No.501 of 2015 has been presented for a permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the plaintiff in the suit schedule mentioned property.

3. The defendant has filed a written statement stating that it is the plaintiff who has encroached upon the property and that the revenue authorities had inspected the property on the direction of the District Collector and found that the neighbouring owner of the property had encroached to an extent of 62 sq.mtrs (667.12 sq.ft.) on the western side of the defendant's property. She added, the civil revision petitioner Ganesan had also encroached upon the land of the defendant on the eastern side and has constructed a super structure.



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4. In order to verify the area of encroachment, an application was taken out by the plaintiff seeking for appointment of an Advocate Commissioner. The said application was received in I.A.No.2 of 2023. After receipt of a counter from the defendant, the learned Principal District Munsif at Alandur went on to dismiss the said application. Hence, this revision.

5. Heard Mr.Jagadish representing Mr.K.S.V.Sethuraman for the civil revision petitioner and Mr.V.Manisekaran for the respondent.

6. The primary issue that the Court would have to answer is whether the defendant's property has been a subject matter of the encroachment at the hands of the plaintiff. In case the plaintiff has encroached upon the defendant's property, then obviously the plaintiff will not be entitled for the relief of permanent injunction.

7. The defendant has specifically pleaded in paragraph no.13 of the written statement that the revenue authorities have inspected the property on the direction of the District Collector together with the help of the Taluk Surveyor and the Village Administrative Officer of



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Kovilambakkam village and had submitted a report that the defendant has been placed in an unfortunate situation whereby her neighbours on the western and eastern side have found it fit to encroach upon her property. Whether the encroachment exists or not would have to be brought to the notice of this Court. Hence, I deem it fit that in order to elucidate this issue, an appointment of an Advocate Commissioner would be essential. In case the Advocate Commissioner visits the property along with the surveyor and submits a report, then it will certainly assist the trial Court to come to a just conclusion in the suit.

8. Accordingly, the civil revision petition stands allowed on the following terms:

(i) Order in I.A.No.2 of 2023 in O.S.No.501 of 2015 dated 08.01.2024 is set aside and the application stands allowed.

(ii) The District Munsif at Sholinganallur shall appoint an Advocate Commissioner who is sufficiently well versed on the civil side to visit the suit property along with the Taluk Surveyor. In case the Taluk Surveyor is not readily available, he shall depute a surveyor attached to his office along with the relevant records.

(iii) The Advocate Commissioner shall measure the property on



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the basis of the revenue records as well as the sale deeds of the plaintiff and the defendant and submit a report.

(iv) The said exercise should be completed within a period of four weeks from the date of receipt of a copy of this order.

9. I had called for a report from the learned District Munisf-cum-Judicial Magistrate at Sholinganallur, if the suit, which had been transferred on account of bifurcation of territorial jurisdiction, has been re-numbered before him. The learned District Munsif has sent a report stating that the suit in O.S.No.501 of 2015 has been re-numbered as O.S.No.743 of 2024 and it is listed for appearance of parties on 25.11.2024. Both the counsels state that their respective counter parts will appear before the District Munsif at Sholinganallur on 25.11.2024. That obviates the necessity for the matter being adjourned for service of summons on the transfer.

10. Both sides agree that the appeal in C.M.A.No.3 of 2023 on the file of the Subordinate Court at Alandaur has also been disposed of. Hence, the Registry shall inform the learned Subordinate Judge at Alandur forthwith and send the records in O.S.No.501 of 2015 on the file



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of the Principal District Munsif Court at Alandur [now re-numbered as

O.S.No.743 of 2024 on the file of the District Munsif-cum-Judicial

Magistrate at Sholinganallur], to the Court at Sholinganallur. On receipt

of the records as well as the report of the Advocate Commissioner, the

learned trial Judge shall give all expeditiousness that the suit requires,

since it is a suit pending for more than nine years and dispose of the

same within a period of six months thereafter. There shall be no order as

to costs. Consequently, connected miscellaneous petition is closed.

19.10.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

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To

1. The Principal District Munsif at Alandur.
2. The Subordinate Judge at Alandur.
3. The District Munsif-cum-Judicial Magistrate at Sholinganallur.



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V. LAKSHMINARAYANAN,J.

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