



CRP No.4105 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2024

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THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

CRP No.4105 of 2024 &
CMP.No.22557 of 2024

1.R.Kathiravan
2.K.Gunavathi : Petitioners

versus

1.Mageswari
2.R.Sankar : Respondents

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the order and fair order made in I.A.No.3 of 2023 in O.S.No.688 of 2023 dated 27.06.2024 passed by the II Additional Subordinate Court, Salem.

For Petitioners : Mr.P.K.Harinath Babu

ORDER

The defendants 1 and 2 are the civil revision petitioners. O.S.No.688



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of 2023 is a suit for declaration and mandatory injunction.

2. According to the plaintiff, her father-in-law executed a WILL in favour of her husband, Perasiriyar on 13.07.1995. The lie of the property was such that there was a common wall separating the houses of the plaintiff and the defendants 1 and 2. After having enjoyed the property, the legatee namely Perasiriyar, executed a settlement deed in favour of the plaintiff. Hence, she claims ownership over the property. According to her, the civil revision petitioners/defendants 1 and 2 are her neighbours. They started construction on their property with the help of the third defendant, who is an engineer. The defendants, while carrying on construction over their land, started digging very close to the common wall, resulting in damage to the same. Hence, the suit for the aforesaid reliefs.

3. A written statement has been filed and the plaintiff took out an application in I.A.No.3 of 2023 for appointment of an Advocate Commissioner to visit the suit property and to note the status of the common wall.



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4. The learned II Additional Subordinate Judge at Salem, after receipt of a counter from the respondents, allowed the application. Hence, the revision.

5. I have heard Mr.P.K.Harinath Babu for the civil revision petitioners.

6. Mr.P.K.Harinath Babu submits that by appointing an Advocate Commissioner, the Court has permitted the collection of evidence through the said office. He states that the appointment of an Advocate Commissioner is absolutely unnecessary and the plaintiff would have to prove the damage caused to the common wall by other evidence and not through the report of an Advocate Commissioner.

7. I have gone through the records and have considered the arguments of Mr.P.K.Harinath Babu.



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8. The aforesaid facts would show that the plaintiff pleads that on account of the activities of the defendants, the common wall, which has been passed down to her by way of a settlement deed executed by her husband, has been damaged by the defendants. Damage to a common wall would necessarily require evidence.

9. Mr.P.K.Harinath Babu's argument that the damage can be proved by way of photographs does not appeal to me for the simple reason that the photographs cannot provide an actual picture of what exists on the site.

10. An Advocate Commissioner acts as the “eyes and ears” of the Court and if he were to visit the suit property and note down the physical features, then it will assist the Court in addressing prayer No. ② of the plaint. It cannot be said that this is an application by which the plaintiff is procuring the evidence. The fact in issue, which is sought to be elucidated under Order XXVI Rule 9, is that, the construction by the defendants 1 and



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2 resulted in damage to the common wall that exists between the houses of the plaintiff and the said defendants.

11. The suit is also one for damages and therefore, necessarily the assessment of damages would be required. In case the defendants have not damaged the common wall, then they need not fear the report of the commissioner which is to be submitted. In any event, the defendants always have the time to file their objections to the Advocate Commissioner's report and if they find the same unsatisfactory, they can always summon the Advocate Commissioner and cross-examine him on his report.

12. In the facts and circumstances of the case, I do not find any necessity to interfere. This civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No

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Speaking Orders/Non Speaking orders
Neutral Citation : Yes/No

To

The II Additional Subordinate Court,
Salem.



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V.LAKSHMINARAYANAN, J.

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