

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 28.08.2024****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****C.R.P.(MD)No.1637 of 2024 and
C.M.P.(MD)No.9604 of 2024**

Kumbakonam Mutual Benefit Fund
Nidhi Ltd.,
Rep. by its General Manager,
Door No.145, T.S.R.Big Street,
Kumbakonam,
Thanjavur District.

... Petitioner/Petitioner/
Plaintiff

Vs.

1. A.Sivakumar

2. Kumbakonam Municipal Corporation,
Rep. By its Commissioner,
Thiruvidai Maruthur Road, Kumbakonam,
Thanjavur District.

... Respondents/Respondents/
Defendants 1 & 2

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order dated 06.07.2024 made in I.A.No.132 of 2023 in O.S. No.102 of 2023 on the file of the learned Additional District Munsif, Kumbakonam and set aside the same and allow this civil revision petition.



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C.R.P.(MD)No.1637 of 2024

For Petitioners : Mr.T.Antony Arulraj
For R-1 : Mr.M.P.Senthil
For R-2 : Mr.M.Rajarajan

ORDER

The plaintiff in O.S.No.102 of 2023 on the file of the Additional District Munsif, Kumbakonam is the revision petitioner herein. The suit has been filed seeking declaration that the plaintiff is entitled to receive sunlight and air as they have always received and to restrain the first respondent from putting up construction in a manner so as to obstruct the same. In the said suit, the revision petitioner had filed I.A.No.132 of 2023 for appointing an Advocate Commissioner. The IA was dismissed vide order dated 06.06.2024 on the ground that it is intended to collect evidence. Challenging the same, this civil revision petition came to be filed.

2. I heard the learned counsel on either side.

3. The first respondent herein has obtained plan approval from the



second respondent and thereafter, put up construction. The learned Standing counsel appearing for the Municipal Corporation submits that there has been some deviation in the manner of construction and that therefore, the Corporation has issued stop work notice. It is also stated that the first respondent has filed an appeal under Section 80A of the Tamil Nadu Town and Country Planning Act.

4. The building being put up by the first respondent is adjacent to the plaintiff's building. The case on hand involves easementary right. The report of the Advocate Commissioner would definitely aid and facilitate the Court below in adjudicating the issues. It is not as if the plaintiff has filed an injunction suit regarding possession and that an Advocate Commissioner is sought to be appointed to gather evidence. In the suit, the relief of declaration regarding easementary right has been sought.

5. The learned counsel appearing for the petitioner draws my attention to the decision reported in **2002 (2) CTC 199 (Saraswathy V. Viswanathan)**. Paragraph No.9 of the said decision read as follows:-

“9. In my view, the reasoning of the learned Judge



cannot be accepted. Merely because there is no dispute with regard to the identity of the property, it does not mean that no case is made out for the appointment of an Advocate Commissioner. The question is whether the defendant is putting up the construction in his property as per the plan sanctioned by the Municipality. Equally, the further question would be as to whether the plaintiffs themselves have put up construction as per any sanctioned plan in their property, for which purpose a visit by the Advocate Commissioner to note down the physical features and take measurements on the basis of the rival documents would be necessary and it would eliminate any detailed oral evidence. ”

It is also seen that the first respondent has not filed any counter opposing the plaintiff's prayer in the IA.

6. In this view of the matter, the order impugned is set aside. The first respondent is entitled to give memo of instructions to the Advocate Commissioner at the time of inspection. This civil revision petition is allowed. No costs.

28.08.2024

Index : Yes/No
Internet: Yes/No
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G.R.SWAMINATHAN,J.

PMU

To

1. The Additional District Munsif,
Kumbakonam
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

C.R.P.(MD).No.1637 of 2024

28.08.2024