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C.R.P.(PD).No. 631 & 632 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.02.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).Nos. 631 & 632 of 2025

&

C.M.P.Nos. 3583, 3585, 3662 & 3663 of 2025

T.Hariharan

...Petitioner in both petitions

Vs.

1.T.Soundararajan

2.The Chairman

CMDA,

Thalamuthu Natarajan Maligai,

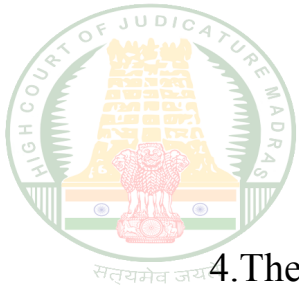
Chennai – 600 008.

3.The Zonal Officer/ Assistant Commissioner,

Zone IX, Ward 125,

Teynampet,

Chennai – 600 018.



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4.The City Engineer,
Corporation of Chennai,
Ribbon Buildings,
Poonamallee High Road,
Chennai – 600 003.

...Respondents in both petitions

Prayer in CRP/631/2025: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 21.12.2024 in IA.No.9 of 2024 in OS.NO.6889 of 2013 on the file of the VII Assistant City Civil Court, Chennai.

Prayer in CRP/632/2025: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 21.12.2024 in IA.No.8 of 2024 in OS.NO.6889 of 2013 on the file of the VII Assistant City Civil Court, Chennai.

For Petitioner : Mr. A.Tamilvanan
(In both petitions)

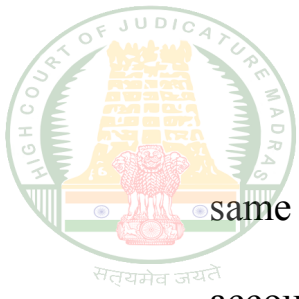


ORDER

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The plaintiff is the petitioner before this Court. The said suit has been filed for a permanent injunction restraining the 1st defendant from interfering and disturbing the possession and enjoyment of the common area, mandatory injunction directing defendants 2 to 4 to demolish the illegal and unauthorised construction put up by the 1st defendant in the A schedule property and B schedule property.

2. The case of the plaintiff is that he and the 1st defendant are siblings and owned property bearing No.74, Old.No.82/1, Karaneeswarar Koil Street, Mylapore, Chennai. This property and the other properties originally belonged to one Thirunavukkarasu, the plaintiff's father, who had executed a Will in favour of the plaintiff and the 1st defendant. The front portion of the property was allotted to the 1st defendant and a rear portion to the plaintiff. The Will in question was probated and an understanding was arrived at between the plaintiff and the 1st defendant contrary to the terms of the Will. However, the



same was not acted upon in the light of the Will of the testator and on account of the difficulties for the usage of the property.

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3. The plaintiff's father died on 07.04.2004 and the Will was probated on 18.07.2007. Thereafter, on the basis of this Will partition deed was executed between the plaintiff and the 1st defendant and their sister, namely, Dhanalakshmi. It is the contention of the plaintiff that as per the Will the western boundary of the 1st defendant property was a common passage measuring 4.5" X 46" and the said passage would hit the door of the plaintiff's property. Now the 1st defendant is putting up construction which would affect the air and light of the property.

4. That apart he is also obstructing the passage in question and is attempting to construct on the passage. The plaintiff also staked his claim on the basis of easement of necessity. He would also allege that the 1st defendant is putting up an unauthorised construction on the common passage and therefore, he has come forward with the suit in question.



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5. A written statement has been filed denying the claim of the plaintiff.

6. An Advocate Commissioner had been appointed in I.A.No.4546 of 2018 in the said suit to note down the physical features including the setbacks on all sides, the extent of construction put up in the common passage. The Advocate Commissioner has also submitted a report giving the details of his inspection. At the stage where the Judgement was reserved, the plaintiff has come forward with two IAs, namely, I.A.Nos.8 & 9 of 2024 seeking to reopen the plaintiff's side witness and to issue subpoena to the Chairman, CMDA, respectively.

7. The main ground on which the applications are moved is on the ground that during the cross examination of the Advocate Commissioner and enquiry they had deposed that the suit property falls under a primary residential area where continuous buildings are not



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8. The respondent had filed a counter inter alia contending that the very applications had no bearing to the suit on hand and that apart the application has been moved at a belated stage.

9. The learned Trial Judge on considering the arguments and the pleadings, proceeded to dismiss the applications holding that the applications are highly belated and that apart no reasons have been given for taking out these applications at this Nth hour.

10. Challenging the same, the petitioner is before this Court.

11. Heard the learned counsel for the petitioner and perused the records.

12. The petitioner has filed the suit on the ground that he has an easementary right to passage provided under the Will. His further



contention is that the 1st defendant has now putting up construction in this common passage. The records would reveal that an Advocate Commissioner was appointed who had also visited the property noted down physical features and measured the suit property. Therefore, there is no necessity for reopening the case to examine the chairman of the CMDA.

13. Accordingly, the order passed by the learned VII Assistant City Civil Judge, Chennai, cannot be found fault with. Accordingly, the Civil Revision Petitions are dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

19.02.2025

Index : Yes/No

Internet : Yes/No

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To

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Chennai – 600 008.

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