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CRP(PD).No.1054 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.03.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

CRP.(PD).No.1054 of 2025

and

CMP.No.6075 of 2025

K.Pandian

... Petitioner

Vs.

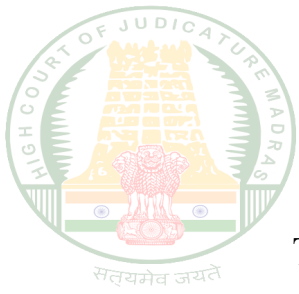
1.Smt. Rani

2.Smt. Mohana

... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 31.01.2025 made in IA.No.4/2024 in OS.No.3194/2024 on the file of the Court of the XII Assistant Judge, City Civil Court, Chennai by allowing this CRP.

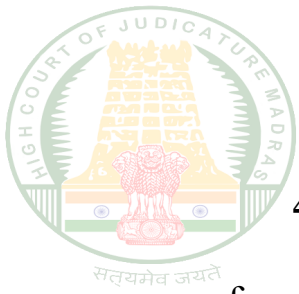
For Petitioner : M/s.T.Dhanasekaran

**ORDER**

The above Civil Revision Petition has been filed by the defendant challenging the order passed in IA.No.4/2024 in OS.No.3194/2024 by the XII Assistant Judge, City Civil Court, Chennai in and by which the learned Judge has appointed an Advocate Commissioner to inspect the plaint schedule property and file a detailed report with regard to the extent of the plaintiff's and the defendant's property, as well as the status of the obstruction and encroachment of the common pathway with their respective document with the help of the engineer and surveyor.

2. The grievance of the defendant to this order is that the measurement of the property as it stands now, without measuring the same as per the earlier documents, will not in any manner go to show that there has been no encroachment by the defendant.

3. In order to appreciate the grievance which has been set out by the defendant it would be necessary to briefly allude to the events which have culminated in the filing of the Civil Revision Petition. The parties are referred to in the same ranking as before the Trial Court.



4. The entire bone of contention between the parties is only with reference to the common pathway. The suit OS. No.3194 of 2024 has been filed for the following reliefs:-

i) Mandatory injunction directing the defendant to remove the construction and obstruction including drain pipes, window panes, structures, etc., in the common pathway of the plaint schedule property;

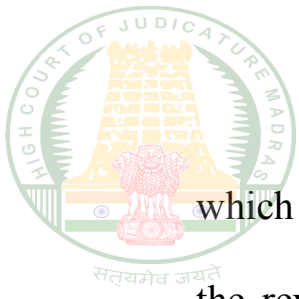
ii) Permanent injunction restraining the defendant his men, agents or any person claiming through him from disturbing the peaceful enjoyment of the easement right of common pathway admeasuring 80ft x 4 ft. in the plaint schedule property.

5. The plaintiffs' contention is that their mother Lakshmiammal had purchased the suit property measuring an total extent of 2800 sq.ft. under two registered sale deeds dated 14.02.1983 and 12.09.1996. She had settled an extent of 600 sq.ft. each in favour of the 1st plaintiff and the 2nd plaintiff under documents numbers 1883/2012 and 1884/2012, the remaining extent of the suit property was settled on her son J.Rajendran under a settlement deed dated



09.04.2012. Rajendran sold the property to one Boomi under a registered sale deed dated 14.12.2018. Boomi in turn had sold the property to the defendant under a registered sale deed dated 27.01.2022 together with a common pathway. The common pathway is situate to the west of the defendant's property and the east of the plaintiffs' property. The defendant had constructed a building consisting of two floors with a total constructed area of 2600sq.ft. in a land measuring 1360 sq.ft. The contention of the plaintiffs' is that the construction put up by the defendant is unapproved, as it deviates from the approved plan dated 08.12.2022. The defendant has not set aside the area for setback spaces.

6. The 1st plaintiff would submit that she has put up a building consisting of ground and two floors and a staircase within her property and the 2nd plaintiff resides in the house which only consists of the ground floor. The access for the plaintiffs to their respective properties is only through this common pathway. Under legal notice dated 18.12.2023 the plaintiffs have called upon the defendants to demolish the unauthorized structures put up on the common pathway



which was not been taken heed to. Representations were also made to the revenue authorities and since the same were not considered the plaintiffs had filed WP.No.1206 of 2024 which is pending.

7. While so, when the plaintiffs questioned the defendant regarding the encroachments and obstructions made by him on the common pathway, the defendant had threatened them with dire consequences. Therefore, the plaintiffs had filed complaints against the defendant before the Ashok Nagar Police Station. However, the police had failed to file any FIR against the defendant. Consequently, they have come forward with the suit in question.

8. The defendant had filed a written statement in which he would contend that he had purchased a 1/3rd right in the pathway along with the land measuring 1360 sq.ft. It is his contention that Lakshmi Ammal had settled upon her son Ranjendran an extent of 1360 sq.ft together with 1/3rd right in the common pathway measuring 320 sq.ft. It is his further contention that originally under settlement deeds dated 11.02.2002, Lakshmi Ammal had settled 560

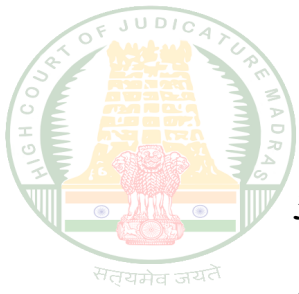


sq.ft. on the 1st plaintiff with a 1/3rd right in the common pathway and an extent of 658 sq.ft. upon the 2nd plaintiff together with a 1/3rd right in the common pathway.

9. Thereafter, the plaintiffs and her mother had colluded together and cancelled the original settlement deeds under two registered cancellation deeds dated 30.08.2012 registered as Doc.Nos.1881/2002 and 1882 of 2012 and on the very same day the plaintiff's mother had executed two fresh settlements deeds in favour of the plaintiffs bearing Doc.Nos.1883 and 1884 of 2012. In these settlement deeds the plaintiffs were allotted 600 sq.ft. each and the common pathway was shown to measure 80 feet by 3 feet. The defendant would submit that the subsequent settlement deeds would not bind the plaintiff's right to a 1/3rd share in the common pathway measuring an extent of 320 sq.ft.

10. The defendant had also come forward with a counter claim for the following reliefs:-

"a. To declare the settlement deed dated



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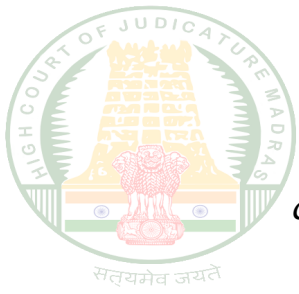
30.08.2012, registered as Doc. No.1883 of 2012 in favour of the 1st plaintiff as null and void;

b. To declare the settlement deed dated 30.08.2012, registered as Doc. No.1884 of 2012 in favour of the 2nd plaintiff as null and void;

c. Directing the plaintiffs to restore 80 sq.ft. of and in the common pathway by removing the unauthorized made by the plaintiffs, more fully descried in the schedule B hereunder;

d. Granting an order of mandatory injunction restraining the plaintiffs their men, agent or persons claimed under them, from interfering with the possession and enjoyment of the defendant's 1/3rd (80' x 4' = 320 sq.ft.) undivided right in the common pathway, more fully descried in the schedule B hereunder, pending disposal of the above counter claim;

e. Granting an order of permanent injunction restraining the plaintiffs their men, agent or persons



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claimed under them, from interfering with the possession and enjoyment of the defendant's 1/3rd (80' x 4' = 320 sq.ft.) undivided right in the common pathway, more fully descried in the schedule B hereunder, pending disposal of the above counter claim and thus render justice."

11. Pending the suit, the plaintiffs have come forward with the impugned IA. In the affidavit filed in support of the IA, the plaintiffs would submit that the defendant is continuing to put up construction in the common pathway and therefore he should be restrained by an injunction order. The plaintiffs would submit that in order to find out the real status of the common pathway and in order to prove the encroachment by the defendant, there existed a necessity for appointing an Advocate Commissioner to file a detailed report.

12. The defendant had filed a counter in the said IA wherein it is being clearly stated that the measurements based on the modified settlement deeds dated 30.08.2012 would not bring forth the true fact



and it would be to the disadvantage of the defendant.

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13. The defendant would submit that this application is filed with the malafide intention of grabbing a larger extent in the name of a common pathway and the defendant would further submit that the entire exercise for appointing an Advocate Commissioner is nothing but an attempt to collect evidence. Therefore, he had sought for the dismissal of the application.

14. The learned XII Assistant Judge on considering the argument of both parties had opined that in order to ascertain the real issue, an Advocate Commissioner should be appointed and that such appointment would not be prejudicial to the interest of the defendant.

15. Heard the counsel for the petitioner and perused the records.

16. This Court is not inclined to set aside the order appointing the Advocate Commissioner since this is a case where one person assert that there has been an encroachment into a common pathway



whereas the other denies it. That apart, the defendant has contended that while settling the properties originally, the original owner, namely, the mother of the plaintiffs and one Rajendran, namely, Lakshmi Ammal had bequeathed 560 sq.ft. in favour of the 1st plaintiff together with a 1/3rd share in the common pathway measuring 300 sq.ft. The said Lakshmi Ammal had executed another settlement deed on the same day in favour of the 2nd plaintiff in respect of 658 sq.ft. and 1/3rd share in the 300 sq.ft. pathway. These two sale deeds were cancelled on 30.08.2012 under Doc.Nos.1881 and 1882 of 2012 and on the very same day, the mother Laskhmi Ammmal had executed two settlement deeds in favour of plaintiffs 1 and 2 bearing Doc.No.1883 and 1884 of 2012 in and by which the two were bequeathed an extent of 600 sq.ft. together with a 1/3rd share each in the common pathway. Under the earlier settlement deeds it is stated that the common pathway measures 75' x 4' = 300 sq.ft. However, in the latter sale deeds it measures 80' x 30' = 240 sq.ft.

17. Therefore, in the light of these documents, and the apprehension expressed by the defendant that he would be at a



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disadvantage if the property is measured only as per the subsequent sale deeds of the year 2012 in favour of the plaintiffs, the Civil Miscellaneous Petition stands disposed of with the following directions.:- "The Advocate Commissioner shall measure the properties both in terms of the settlement deeds dated 11.12.2002 bearing Doc.No.2709 & 2710 of 2002 as also the settlement deeds dated 30.08.2012 bearing Doc.Nos.1883 and 1884 of 2012. The Advocate Commissioner shall prepare two sketches one as per the settlement deeds dated 11.12.2002 and other as per the settlements deeds dated 30.08.2012".

18. This order has been passed without issuing notice to the respondent since this Court is not setting aside the impugned order but is only extending the scope of the warrant. No costs. Consequently, the connected Miscellaneous Petition is closed.

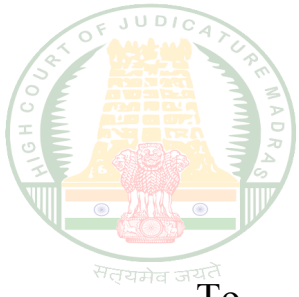
14.03.2025

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No



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To
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1.The XII Assistant Judge, City Civil Court, Chennai.



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P.T. ASHA. J.,

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