



A.No.3254 of.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 31.07.2025	PRONOUNCED ON 07.10.2025
---------------------------	-----------------------------

CORAM :

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A.No.3254 of 2025

in

C.S.No.76 of 2025

1.T.R.Ashwin Kumar
2.Archana Ramana Kumar
3.T.R.Ajay Kumar

... Applicants/1-3 respondents/
1-3rd defendants

vs.

1.Prema
2.T.Sitharthan
3.Ramesh Shanmugam
4.R.Bhavani Devi
5.N.Sriram
6.H.Chitra
7.Narayanan
8.Mohan

... Respondents

For Applicant : Mr.Aravind Pandian Sr., Counsel for
Mr.Karthikeyan Anbazhagan

For Respondent : Mr.C.Jagadish for RR1 to 7



WEB COPY

A.No.3254 of.



ORDER

This Application had been filed to pass an order to appoint an Advocate Commissioner to inspect and Survey the common passage in Survey Nos.R.S.No.3325/20 and R.S.No.3325/21, Block No.65, Mylapore, Part 2 Village, Mylapore Taluk, Chennai District, ascertain and verify the alleged encroachment as claimed by the respondents/plaintiffs in the common passage and file a report with the help of a Surveyor.

2. Heard Mr.Aravind Pandian, learned Senior counsel appearing for Mr.Karthikeyan, learned counsel appearing for the applicants and Mr.C.Jagadish, learned counsel appearing for the respondents.

3. Mr.Aravind Pandian learned Senior Counsel appearing for the applicant would submit that the existence of the pathway is not disputed, only the width of the passage is disputed. According to him, the common passage has a width of 12 feet only. He would further submit that the FMB Sketch of the passage would only indicate 3.6 meters in width which includes 11 feet and 9 inches. But, however, the respondents/ plaintiffs had approached this Court by contending that the passage is 14 feet in width. He would submit that the



suit properties form part of a larger extent of land which was sold in portions to various persons from whom the predecessors in interest of the applicants had purchased Plot-A as annexed in the sketch attached to the plaint. The respondents/plaintiffs had purchased a portion of the Plot-B for which they had access through the common passage which ends with the property purchased by the respondents/plaintiffs. He would submit that to give a quietus to the entire issue, an Advocate Commissioner to be appointed to measure the Suit Schedule Property to find out its width as per the FMB sketch and other documents to put to rest the *lis* in the suit. Therefore, he prays this Court to allow the present application.

4. Countering his arguments, Mr.C.Jagadish learned counsel appearing for the respondents/ plaintiffs would submit that the width of the suit passage is 14 feet and after demolishing of the building in Plot-A, the applicants are attempting to encroach a portion of the passage where the water line and electricity line had been drawn to the property belonging to the respondents/ plaintiffs. He would submit that the father of the applicant had put up a compound wall demarcating his property and he had never raised an objection when the respondents/plaintiffs had laid water lines and electrical lines



abutting the compound wall which forms part of the passage. Only after demolishing the building to put up a new construction, the applicants are interfering with the usage of the passage.

5. He would further submit that by appointing an Advocate Commissioner, the applicants cannot be permitted to collect evidence and they have to substantiate their claim that the said passage which has been in existence for more than 90 years does not measure 14 feet in width by the relevant necessary documents. Even without filing an written statement, the applicant is attempting to appoint an Advocate Commissioner to collect evidence in that regard. Therefore, he would pray this Court to dismiss the application.

6. In support of his contention, he had also relied upon various judgments to particularly contend that the Advocate Commissioner cannot be appointed to collect evidence to find factum of possession.

7. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.



8. The availability of a common passage for the respondents/ plaintiffs to reach their property is not disputed. The only issue that had been disputed is with regard to the width of the passage. As rightly pointed out by the respondents plaintiffs, the applicants being the defendants even without filing the written statement, putting forth their right for the said common passage or even making any statement on record had filed the present application to find out the width of the passage, such an attempt would amount to collection of evidence by appointment of Advocate Commissioner.

9. In such view of the matter, this Court is of the view that it is premature for this Court to decide on the necessity of appointment of an Advocate Commissioner, as the pleadings in the suit had not been completed by the applicants who are also the defendants in the suit.

10. For the aforesaid reasons, I do not find any merits in the present application and accordingly, the same stands dismissed. However, there shall be no order as to costs.



A.No.3254 of.

07.10.2025

Index : Yes / No
Internet : Yes / No
Gba



WEB COPY



A.No.3254 of.

K.KUMARESH BABU.J.,

Gba

Pre-Delivery Order in
A.No.3254 of 2025
in
C.S.No.76 of 2025

07.10.2025