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C.R.P.No.4950 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23-01-2025**

CORAM

THE HONOURABLE MR JUSTICE V. LAKSHMINARAYANAN

CRP NO. 4950 of 2024 AND CMP NO. 27849 OF 2024

R.Leelavathi

W/o. Late Ramanujulu, Rep by her Power Agent

Mr.Dharani Chander, Door No.16(Plot No.18)

Gurunathan Street, Palavanthangal, Chennai-600 114

.... Petitioner

Vs

L.Muniyan

S/o. Lakshmanan, door No.18(Plot No.13, Gurunathan

Street, Palavanthangal, Chennai-600 114

.... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India praying to set aside the order in I.A.No.4 of 2024 in O.S.No.379 of 2010 on the file of the District Munsif, Alandur dated 13.11.2024.

For Petitioner : Mr.G.Surya Narayanan

For Respondent : Ms.S.Deepika

ORDER

This Civil Revision Petition challenges the order of the learned District Munsif, Alandur in I.A.No.4 of 2024 in O.S.No.379 of 2010 dated 13.11.2024. The plaintiff is the revision petitioner.



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2. The case of the plaintiff is that she had been benefitted with an assignment by the Government in respect of S.No.41 bearing Plot No.14 to an extent of 2205 Sq.ft of Nanganallur Village, Saidapet Taluk. She pleads that the linear measurements of the property are 35 ft in the Northern and Southern side and 63 ft in the Eastern and Western side. The cause of action for the suit was that on 18.04.2010, the defendant, who is a neighbour of the plaintiff in Plot No.13, demolished his earlier tiled roof house and started a fresh construction on the Western side. The plaintiff pleaded that taking advantage of the removal of the previous superstructure, the defendant encroached on the Western side of the plaintiff's property.

3. The defendant entered appearance and filed a detailed written statement. He denied the allegation of encroachment. On the contrary, he pleaded no space had been let out by the plaintiff so as to enable the defendant to encroach upon it. His clear case is that there is no set back space as pleaded by the plaintiff in the suit property. He further pleaded that he is constructing only in accordance with the approved plan and in strict adherence to the rules and norms thereof.

4. On the basis of these pleadings, issues were framed and the parties were pushed to trial. The suit is now listed for cross examination of P.W.1. After having filed the proof affidavit in the suit, the plaintiff took out an application seeking appointment of Advocate Commissioner to investigate, to measure petitioner /



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plaintiff's plot along with Taluk Surveyor as per the assignment order issued in favour of the plaintiff by the Special Tahsildar (Assignment) Saidapet dated 18.04.1975 and to take photograph and to file report thereon.

5. This application was resisted by the defendant pleading that reference to the release deed is absolutely unnecessary for the purpose of appointment of an Advocate Commissioner. He further pointed out that the allegation that the defendant has encroached upon 91.35 Sq.ft of the petitioner's property is unfounded. He added that it is the delaying tactic adopted by the plaintiff in order to avoid the suit seeing the end of the litigation.

6. The learned Trial Judge, after consideration of the affidavit and counter, came to the conclusion that the application having been filed after the suit had been pending for a period of a decade and more does not deserve consideration. She further pointed out that the suit is at the stage of cross examination of P.W.1, and that the plaintiff can only rely upon the documents in order to substantiate her case and hence dismissed it. Aggrieved by the same, the present civil revision petition.

7. Heard Mr.G.Suryanarayanan for the petitioner and Ms.S.Deepika for the respondent. The learned counsels reiterated the contentions that they placed before the Court below. I have carefully considered the submissions and have gone through the records.



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8. The suit is one for permanent and mandatory injunction. The schedule of property annexed to the plaint shows the extent that the plaintiff claims a right in the property is 2205 Sq.ft. There is no dispute that the defendant is the owner of the adjacent plot. The plaintiff pleads that the defendant, has encroached upon her set back space on the Western side. This factor has been stoutly denied by the defendant. The issue that has to be answered by the Court in this suit is, whether the defendant has encroached upon the plaintiff's property on the Western side or whether as pleaded by the defendant he has constructed within the four boundaries of his plot. Where there is a dispute on the identity or extent, appointment of an Advocate Commissioner to survey the same would be essential. A report submitted by the Advocate Commissioner would assist the Court at the time of pronouncement of the judgment. This is because the Judge cannot personally visit the property and measure the same.

9. Though the petitioner seeks for appointment of an Advocate Commissioner only to measure her property, I am not willing to accede to the said request. Both the properties viz., of the plaintiff's and the defendant's would have to be surveyed. Only then, it will come to the notice of the Court whether there is an encroachment. It would not be out of place to point out that in a suit for mandatory injunction, the plan drawn by the Advocate Commissioner is annexed to the decree in order to enable the executing Court to give appropriate directions in the event of the suit being decreed.



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10. Since the plaintiff asserts that there is an encroachment and as that fact has been denied by the defendant, I am inclined to consider the revision. At this stage, I have to take note of the vehement objections raised by Ms.Deepika that the suit has been pending for the past 14 years and the plaintiff had kept quiet for the entire period and moved the application for appointment of an Advocate Commissioner only when the suit is taken up for trial. This delay can be off set by directing payment of costs by the plaintiff to the defendant. In fact, there is one line of view expressed by Hon'ble Mr.Justice Shivappa in **A. Nagarajan vs A. Madhanakumar (1996) 1 MLJ 422**, that an Advocate Commissioner should be appointed only after some evidence has been recorded by the Court

11. In the light of the above discussion, this Civil Revision Petition is disposed in the following terms :

- (a) The order passed by the learned Principal District Munsif, Alandur dated 13.11.2024 in I.A.No.4 of 2024 in O.S.No.379 of 2010 is set aside.
- (b) Warrant shall be issued to an Advocate Commissioner, who is well versed in the civil side to measure the plaintiff's and the defendant's property on the basis of the documents which were available with the parties upto the year 2010. The Advocate Commissioner will be assisted by a Surveyor.
- (c) The fee of the Advocate Commissioner is fixed at Rs.20,000/-.



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(d) The learned Trial Judge shall proceed with the trial and shall continue record evidence. She shall await the report of the Advocate Commissioner and give an opportunity to both the parties to file their objections, if any, and also in case of requirement, to examine the Advocate Commissioner in terms of Order XXVI.

(e) Thereafter, the evidence together with the Advocate Commissioner's report shall be analyzed and a judgment shall be pronounced in the suit.

(f) For the delay caused in making the application, the plaintiff will pay a sum of Rs.20,000/- (Rupees Twenty Thousand only) to the defendant within a period of four weeks from today.

(g) The learned trial Judge shall ensure that the suit is disposed of on or before **30.04.2025**.

(h) The learned Judge is requested to act on the web copy of this order and shall not wait for the certified order copy for issuance of warrant to the Advocate Commissioner.

12. With the above directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

23.01.2025

Index : Yes/No

Neutral Citation : Yes/No

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Note : Order to be uploaded today (23.01.2025)



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To
The Principal District Munsif
Alandur.



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V. LAKSHMINARAYANAN, J.

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