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C.R.P.No.5164 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2025

CORAM

THE HONOURABLE MR.JUSTICE **V. LAKSHMINARAYANAN**

C.R.P.No.5164 of 2024
and C.M.P.No.28930 of 2024

MEDAVAKKAM ISHWARYA HOMES
APARTMENT OWNER'S ASSOCIATION
Rep. By its President,
Mr.S.Rajavel
S/o. Mr.Siva Sankaran,
Having office at No.12,
Ishwarya Homes Apartment,
Mambakkam Main Road,
Medavakkam, Chennai – 600 100.

.. Petitioner

vs

1.Pratima Joshi
2.K.R.Ashok Kumar Thangaraj
3.K.R.Vincent Periyannayagam

.. Respondents

Petition filed under Article 227 of the Constitution of India
against the fair and decretal order dated 30.09.2004 in I.A.No.442
of 2018 in O.S.No.180 of 2018 on the file of the Additional District
Munsif, Alandur.

For Petitioner	:	Mr.B.Vijay for Mr.M.Thangadurai
For Respondents	:	Mr.V.Krishnamoorthy



C.R.P.No.5164 of 2024

ORDER

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This civil revision petition challenges the order passed by the learned Additional District Munsif at Alandur in I.A.No.442 of 2018 in O.S.No.180 of 2018 dated 30.09.2024.

2. The civil revision petitioner is the plaintiff in the suit. They presented O.S.No.180 of 2018 seeking the following relief:

"a) for a Permanent injunction restraining the defendants, their men, agents, servants etc., from in any manner preventing or obstructing members of the plaintiff association from using the suit B schedule property as passage road."

3. The plaintiffs pleaded that 'B' schedule mentioned property marked in red in the plaint plan is a public road. According to them, the 'A' schedule mentioned property had been developed into a residential complex consisting 32 flats. The access for the 'A' schedule mentioned property is through the 'B' schedule mentioned property / public road. On account of the fact, defendants 1 to 3 obstructed the members of the plaintiff Association from utilising the 'B' schedule property, on 15.05.2018, they came forth with the suit. Along with the suit, they moved an application for appointment of



C.R.P.No.5164 of 2024

an Advocate Commissioner.

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4. On being served with summons, the defendants entered appearance and filed a detailed written statement. According to the defendants, the portion of the property marked as 16 feet road in the plaint plan is not a public road but a common passage meant exclusively for the defendants. Such a passage was created by their vendor one Rajagopalan on 01.03.1984. They pleaded that the 16 feet passage, is not a public road, but set apart on the patta land of the defendants for their enjoyment. They denied the pleading of the plaintiff that the lane running to the north of the 'A' schedule property till Mambakkam Main Road is a public road set apart by the local panchayat authority and by the Commissioner, Chitlapakkam Panchayat. They further pointed out that the Chitlapakkam Panchayat has presented a suit in O.S.No.835 of 2011 seeking a declaration that the 16 feet passage is a public road and that suit had a wider relief than the present one.

5. They further alleged that the very same plaintiff has filed an application to implead themselves as a party to O.S.No.835 of 2011, in I.A.No.704 of 2017. This application was dismissed by the learned Trial Judge on 07.06.2017. The defendants further pointed out that in that suit, an application was filed for



C.R.P.No.5164 of 2024

appointment of an Advocate Commissioner in I.A.No.2143 of 2013, which also came to be dismissed by the learned Principal District Munsif, Alandur on 20.02.2014.

6. The learned Trial Judge, took up the application for appointment of an Advocate Commissioner for disposal. He perused the plaint, written statement, affidavit and the counter filed by the parties and held that the existence of the road should be proved by way of evidence and not by way of an Advocate Commissioner's report. Consequently, he dismissed the application. Aggrieved by the said dismissal, the present civil revision arises before this Court.

7. I heard Mr.B.Vijay for Mr.M.Thangadurai for the civil revision petitioner and Mr.V.Krishnamoorthy for the contesting respondents.

8. Mr.B.Vijay pointing out to the averments made in paragraph 17 of the written statement urged that as the very existence of the road has been denied by the defendants, there is a necessity for appointment of an Advocate Commissioner. He further urges that there is no bar for appointment of an Advocate Commissioner in a suit for injunction and, therefore, the order



C.R.P.No.5164 of 2024

passed by the learned Trial Judge requires to be revised.

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9. Per contra, Mr.Krishnamoorthy argues that the 'B' schedule property consists of two portions viz., passage running from Mambakkam Main Road ending with the property belonging to defendants 2 and 3, the width of which is 16 feet and from the edge of the property belonging to the defendants 2 and 3, a 20 feet passage runs to a street called Ramaiah Street. He states that the 16 feet passage is an exclusive passage for the defendants and the 20 feet passage belongs to the patta land of the plaintiff's vendor. He pleads that already several attempts had been made to convert the private passage into public road, at the instance of the local body viz., Chitlapakkam Panchayat and it had ended in a failure. Hence, he urges that the order of the learned Trial Judge be confirmed.

10. I have carefully considered the submissions of both sides.

11. I have to agree with Mr.Vijay that there is no bar for a Court to appoint an Advocate Commissioner in a suit for permanent injunction. However, the mere fact that there is no bar does not



C.R.P.No.5164 of 2024

mean that the Advocate Commissioner can be appointed for the asking. An Advocate Commissioner is appointed to elucidate the matter in issue in terms of Order XXVI Rule 9 of The Code of Civil Procedure, 1908.

12. The matter in issue in the present case is, whether the 16 feet passage which runs from Mambakkam Main Road till the property of the defendants 2 and 3 and the 20 feet passage which runs to the northern side of 'A' schedule property is a public road or not. This shows the existence of the passage is not in dispute. The dispute being title to the two passages. While Mr.Krishnamoorthy's client asserts that the 16 feet passage is their exclusive property, it is the plea of Mr.Vijay that it is a public road. Whether it is public road or private passage cannot be proved by appointment of an Advocate Commissioner.

13. For a private property to become a public one, it should either have been acquired by the Government or should have been dedicated by the owner for the benefit of the public. Both these aspects cannot be proved by appointing an Advocate Commissioner. When the existence of the passage is not in dispute and the dispute relates to the ownership of the same, I do not find any purpose will



C.R.P.No.5164 of 2024

be served in appointing the Advocate Commissioner. Leaving it open to the parties to prove their respective cases before the Trial Court, this civil revision petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

14. At this stage, Mr.Krishnamoorthy points out that this Court while dismissing the revision against rejection of plaint in C.R.P.No. 1728 of 2021 had directed the Trial Court to dispose of the suit within a period of three months from the date of receipt of a copy of the order in that revision. He further states that though the order was passed on 29.04.2024, till date, the suit is languishing. The learned Additional District Munsif at Alandaur is reminded to adhere strictly to the order passed by this Court previously and ensure that the suit is disposed of as expeditiously as possible.

23.01.2025

Index:Yes/No
Neutral Citation:Yes/No
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To

The Additional District Munsif,
Alandur.



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C.R.P.No.5164 of 2024

V. LAKSHMINARAYANAN,J.

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C.R.P.No.5164 of 2024

23.01.2025