

The Commissioner Vs. The Indian Humes

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Court : Chennai

Decided On : Jan-22-2015

Judge : V.Dhanapalan

Appellant : The Commissioner

Respondent : The Indian Humes

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

08. 10..2009 CORAM: THE HONOURABLE MR. JUSTICE R.SUDHAKAR C.R.P.(PD) No.2844 of 2009 and M.P.No.1 of 2009 P.S. Rangarajan ...Petitioner Vs. 1.K.G. Pandurangan 2.The President, HIG Flat Owners Welfare Assn., Kotturpuram, Chennai.85. ... Respondents Prayer: Petition filed under Article 227 of the Constitution of India against the order dated 6.8.2009 passed in I.A.No.4902 of 2009 in O.S.No.8284 of 2006 by the XI Assistant Judge, City Civil Court, Chennai. For Petitioner : Mr.P. Gopalan For Respondents : Mr. A. Srinivasa Subbiah

ORDER

This revision petition has been filed by the first Defendant. The revision petitioner is aggrieved by the order in I.A.No.4902 of 2009 in O.S.No.8284 of 2006, dated 6.8.2009.

2. The revision petitioner/ first defendant is the owner of ground floor flat No.2 in D Block and the first respondent/ plaintiff is the owner of flat No.6 in the second floor of D Block. The plaintiff filed a suit for the following relief:- a) for a Mandatory injunction directing the first defendant to restore the common area as described in schedule "C" and in the plaint plan by removing the chain link fencing, gate put up in front side and back side and car shed-cum-portico put up in front side of the suit common area as mentioned in the Schedule "C". b) for a Permanent injunction restraining the first defendant and his men, agents, workmen, legal representatives and assigns etc., from in any manner carrying on any illegal construction activities in the common area of Suit Schedule "C" mentioned property.

3. Plaint 'C' schedule property is the common land area on the northern and southern side of suit schedule "A" and "B" properties of 'D' block in Adyar Apartments, 4th main road, Kotturpuram, Chennai.5. Written statement has been filed on 20.6.2007. I.A.No.9952 of 2007 has been filed by the revision petitioner/ first defendant to appoint an advocate commissioner for local investigation of plaint 'B' and 'C' schedule property and note down the physical features in and around the suit property which was opposed by the plaintiff/ first respondent herein. However, an advocate commissioner was appointed and he submitted a report dated 17.6.2008. The said report was objected to by the revision petitioner/first defendant. I.A.No.10021 of 2008 was filed by the first defendant/ revision petitioner to appoint a fresh Advocate Commissioner for the very same relief. The Court below was inclined to accept the revision petitioner's/ first defendant's plea and the Advocate Commissioner report dated 17.6.2008 was scrapped. Thereafter, a warrant was issued in I.A.No.10021 of 2008 on 23.3.2009 as follows. " where as it is deemed to requisite after issuing notice to both sides to inspect the suit properties and to note down the physical features of the suit properties and the fences around them and other structures in the fence like gates, doorways etc., and to file a report along with a rough sketch, you are hereby appointed as a commissioner for the above said purposes."

4. In paragraph 4 of the affidavit filed in I.A.No.10021 of 2008, the revision petitioner/ first defendant referred to the enclosures, fencing and similar structure

put up by the adjacent owners abutting 'D' Block, which is the subject matter of the suit property for the purpose of drawing the attention of the Court to use of the common open space by adjacent flat owners. The warrant was issued on 23.3.2009. The advocate commissioner filed a report on 30.3.2009 along with the plan.

5. The first defendant/ revision petitioner filed his objections and also filed I.A.No.4902 of 2009 to re-issue the warrant of commission to the same advocate commissioner, who submitted his report on 30.3.2009 with a request that he should be asked to note down the stair case, flats and fences in existence on the eastern side of the 'D' block. This application was objected to by the first respondent/ plaintiff stating that the said application is vexatious and intended to prolong the litigation. It is not necessary for adjudication of the suit. The Court below accepted the plaintiff plea and by the order dated 6.8.2009 rejected the I.A.4902 of 2009. Aggrieved thereby, the present revision petition has been filed.

6. Learned counsel Mr. Gopalan, appearing for the revision petitioner/ first defendant submitted that the report filed by the Advocate Commissioner lacks certain material particulars and there is no impediment in re-issuing the warrant for gathering further materials, which will be relevant for the adjudication of the suit. The learned counsel for the petitioner also pointed out that the purpose of noting down the physical features of the buildings and existence of the fences in 'D' Block and other blocks is to show that the similar structures are put up by the other owners in other blocks including the entire 'D' Block of Kottur Garden 4th main road. The warrant issued to the Advocate Commissioner is not in accordance with the application filed and the order passed by the Court below. He relied upon the decision of this Court reported in Jyothiammal Vs. - Jayapal (2009, 4, MLJ620.

7. Heard Sri. Srinivasa Subbiah, learned counsel for the first respondent/ plaintiff, who reiterated the finding of the Court below.

8. As seen from the affidavit filed in the first instance for the appointment of Advocate Commissioner, the grievance of the revision petitioner/ first defendant is to note down the physical features of the suit 'A' and 'B' schedule property and the nature of structures that has been put up by the owners of the property adjacent to

the suit property. On the nature of the pleadings made in the affidavit, the Court below thought it fit to issue warrant to the Advocate Commissioner to note down the physical features of the suit property, fences around them and other structures like gates and doors etc. and the warrant was issued on 23.3.2009. Consequent thereupon, the report of the Advocate Commissioner was filed on 30.3.2009. In the present, I.A.No.4902 of 2009, the revision petitioner/ first defendant plea is that the Commissioner should note down the buildings and fences and other structures on the eastern side of the 'D' Block. Apparently, the other blocks D1, C1 and C2 are in the eastern side of the 'D' Block. They have no connection with the suit property. The lis is between the first respondent/ plaintiff and the first defendant/ revision petitioner with regard to the user of the common land, which is set out in suit schedule 'C'. What is the relevance of the nature of property, and its use in respect of the land adjacent to the suit schedule property is the question that has been rightly raised by the Court below. This Court also finds no good reason or justification to accept the plea that the nature of property adjacent to the suit property is relevant for the adjudication of the suit. The Court below had earlier shown indulgence by scrapping the report dated 17.6.2008 at the behest of the revision petitioner/first defendant and a fresh warrant of commission was issued and he has no serious objection with regard to the report filed on 30.3.2009 except to state that further material is required with regard to adjacent property and the fencing. This plea did not find favour with the Court below stating that the existence and non existence of fences and other structures of adjacent property is not necessary for the adjudication of the suit as the fencing and other structures in the suit property itself is admitted by both parties. The report of the Commissioner also confirms the existence of the such structures.

9. The Court below has clearly held that the nature of fence and use of open land in the adjacent land is not necessary for the present suit and that finding is well reasoned and justified. As rightly pointed out by the Court below, what is the nature of the fencing in the adjacent property is of no consequence for the adjudication of the present suit and that will not have no bearing on the lis between the parties in the present suit. This Court Finds no infirmity in the order of the Court below dismissing the application. The decision cited supra by the revision petitioner will not be relevant to the facts of the case because the purpose of

reissuing the warrant in the present case is not for a different purpose. The further material sought for will have no relevance for the effective disposal of the suit and that has been rightly observed by the Court below. The intention of the revision petitioner is to prolong the litigation. Therefore, finding no merits, this civil revision petition is dismissed. Consequently, M.P.No.1 of 2009 is also dismissed. No costs. 08.10.2009 ra Index: No Internet: yes To The XI Assistant Judge, City Civil Court, Chennai. R. SUDHAKAR,J., CRP(PD)No.2844 of 2009 Date:

08. 10.2009

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