

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2015

C O R A M

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

C.M.A.No.338 of 2006

and

C.M.P.No.1076 of 2006

1. M.Natarajan (deceased)
2. N.Mangalam
3. Kamala
4. Vizea
5. Radjalatchoumy
6. Paramesvary
7. Shanthi
8. N.Mourougasamy
9. N.Balane
- 10.N.Selvaradjou ... Appellants

Appellants 2 to 7 represented by
their Releasees/Power Agents

Appellants 2 to 10 are brought on
record as legal representatives of
the deceased sole appellant and
recognized the appellants 8, 9 and 10
as Power Agent/Releasees of the
appellants 2 to 7 vide order of
Court dated 26.10.2009 in
C.M.P.Nos.1292 to 1295 of 2009.

-Vs.-

Manoranjitham ... Respondent

Civil Miscellaneous Appeal filed under Order 43 Rule 1 of
the Code of Civil Procedure against the judgment and decree
dated 09.09.2005 passed by the learned Principal District Judge,
Pondicherry in A.S.No.24 of 2005 in modifying the judgment and
decree dated 28.01.2005 passed by the learned Principal District
Munsif, Pondicherry in O.S.No.456 of 2004.

For Appellants ... Mr.R.Muralidharan

For Respondent ... Mrs.V.Srimathi
for Avinash

J U D G M E N T

This Civil Miscellaneous Appeal has been filed as against the judgment and decree dated 09.09.2005 passed by the learned Principal District Judge, Pondicherry in A.S.No.24 of 2005 in reversing the judgment and decree dated 28.01.2005 passed by the learned Principal District Munsif, Pondicherry in O.S.No.456 of 2004.

2. For convenience sake, the parties are referred to here under according to their litigative status and ranking before the trial court.

3. The brief facts of the case is as follows:

(i) The respondent/plaintiff purchased the suit scheduled property from the appellant/defendant vide registered sale deed dated 30.11.1977. According to the plaintiff, the defendant has originally purchased the said suit property from its owner under a Notaire sale deed dated 14.6.1963. At that time, no re-survey has taken place and hence the cadastre number and paimash number were given in the sale deed. However, when the defendant sold the suit property to the plaintiff, he has wrongly mentioned the Re-survey No.as 154/11 instead of R.S.No.154/8. However, when the plaintiff wanted to sell the suit property to third party, she found the mistake. Hence the suit.

(ii) The plaintiff filed the suit in O.S.No.456 of 2004 seeking declaration to the effect that the re-survey number in the sale deed dated 30.11.1977 as 154/8 in the place of 154/11 and to direct the defendant to execute the rectification deed by correcting the re-survey number, failing which prayed the court below to execute the above rectification deed in favour of the plaintiff by way of mandatory injunction. The said suit was decreed as prayed for.

(iii) Challenging the same, the defendant filed the appeal and the first appellate Court while setting aside the judgment and decree of the trial court remitted the matter back to the trial court for fresh disposal with a further direction to the plaintiff to file an application for appointment of an Advocate Commissioner to measure the suit property with reference to documents and other revenue records.

(iv) Aggrieved by the said order, the defendant has filed this Civil Miscellaneous Appeal.

4. Heard both sides.

5. Learned counsel for the appellant/defendant would submit that when the lower appellate court has held that the Old Survey No.495/2 part correspond to new Re-Survey No.154/8 in the name of one Ragavan alias Nithianandam, it should have held that the respondent/plaintiff has failed to prove that R.S.No.154/8 is the correct survey number. He would further submit that the suit is barred by limitation. When that be so, the remand order passed by the first appellate court in directing the Commissioner to identify the correct survey number is not sustainable. Accordingly, he would pray for setting aside the same.

6. Learned counsel for the respondent/plaintiff would submit that in the original written statement, the appellant/defendant has not mentioned the name of the competent authority, who can effect transfer as per the Boundary Settlement Act, 1970. However, she would submit that the remand order passed by the first appellate court is correct and if at all the appellant/defendant want to file any additional written statement, he can do so only before the trial court and not before any other authority. Further, if any such additional documents are filed, both sides have to let in evidence regarding the same. Hence, she would pray for the dismissal of the civil miscellaneous appeal.

7. After hearing the arguments on either side and on perusal of the judgment passed by the lower appellate court, one thing is clear, that there is a dispute regarding the survey number and correctly, the lower appellate court has remanded the matter back to the trial court for fresh disposal. Further, it had also directed the respondent/plaintiff to file an application seeking appointment of an Advocate Commissioner to measure the property with reference to the documents filed and other revenue records. In such circumstances, I do not find any reason to interfere with the fair and reasonable order passed by the first appellate Court.

8. Therefore, it is suffice to state that the trial court shall give sufficient opportunity to both sides, not to only let in evidence, but also for appointment of Advocate Commissioner to measure the suit property with reference to the available documents and the revenue records. The appellant/defendant is also at liberty to file additional written statement, if any. On filing of such documents and after letting in evidence, by both sides, the trial court is directed to dispose of the very suit itself as directed by the first appellate court, within a period of six months, thereafter.

9. With the above observation, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vj2

To

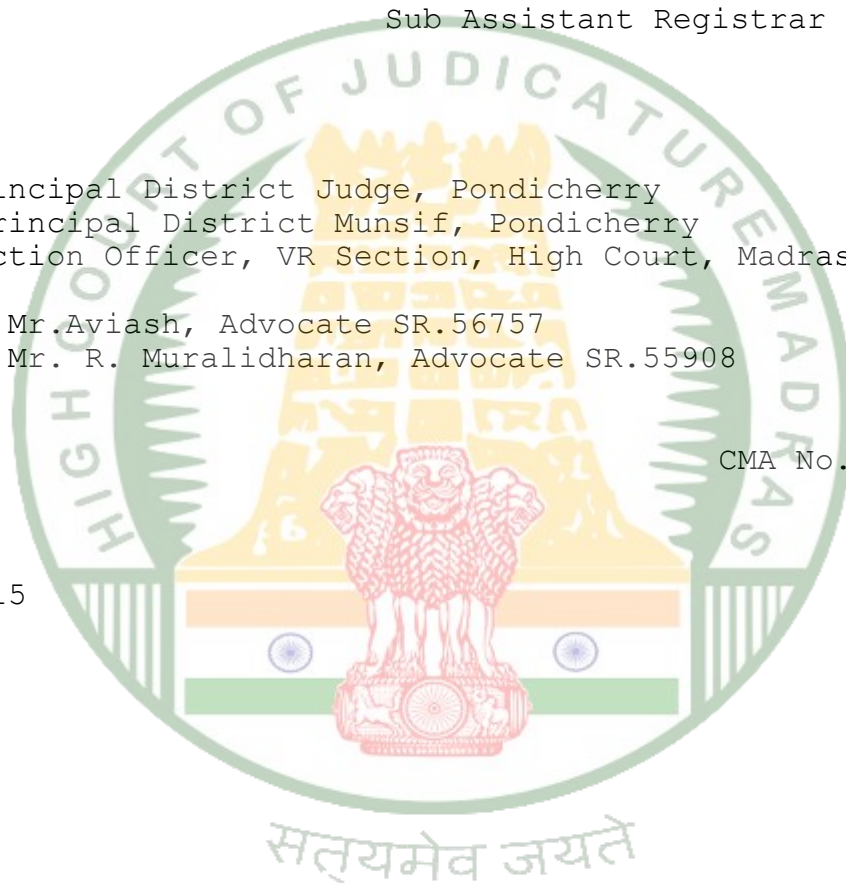
1. The Principal District Judge, Pondicherry
2. The Principal District Munsif, Pondicherry
3. The Section Officer, VR Section, High Court, Madras.104

+ 1 cc to Mr.Aviash, Advocate SR.56757

+ 1 cc to Mr. R. Muralidharan, Advocate SR.55908

CMA No.338 of 2006

CTK(CO)
Eu 27.11.15



WEB COPY