



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2015

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(MD).No.554 of 2015

and

M.P.(MD).No.1 of 2015

Marivaratharaja @ T.M.V.Rajan

... Revision Petitioner

vs.

1.K.Marimuthu

2.Ganesan

3.Babu

... Respondents

PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.162 of 2011 in O.S.No.56 of 2011 on the file of the Sub Court, Pattukottai dated 09.12.2014 by allowing this civil revision petition and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner :Mr.D.R.Murugesan

For Respondent :Mr.K.Guhan

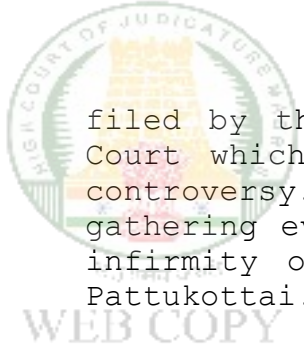
O R D E R

The suit for declaration and for mandatory injunction, the plaintiff had filed an application in I.A.No.162 of 2011 for appointment of Commissioner and the same was allowed. Aggrieved by which, the third defendant in the suit has filed this revision.

2.According to the plaintiff, the defendant is trying to put up a permanent construction in the portion marked 'ABCD' in the plaintiff's property. The Commissioner has measured both the plaintiff as well as the defendant's property based on their title sale deed.

3.The defendants had objected the same stating that the rough sketch enclosed in the plaintiff is not correct and the suit properties are unidentifiable and that the petitioner had not disclosed the alleged extent of the encroachment with measurements described as ABCDE. Both the parties are claiming title through separate sale deed. The commissioner has been appointed by the trial Court to find out whether the portion purchased by the plaintiff is within the portion marked as 'ABCD' in the plaintiff sketch. If the plaintiff is entitled to the portion marked as 'ABCD', then any construction put up by the defendants would be an encroachment. However, it is objected by the defendants.

4.To resolve the dispute that the commissioner has been appointed to measure the property with the help of surveyor, based on the revenue records. It is open to the defendants to file a memo of instruction to the Commissioner and also to file objection, if any to the report to be



filed by the commissioner. After the report has been filed, the trial Court which is trying this suit, can resolve the dispute which is in controversy. An appointment of Commissioner, unless otherwise it is for gathering evidence, need not be interfered with. Therefore, there is no infirmity or illegality in the order passed by the Subordinate Court, Pattukottai.

5. In the result, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

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To

1. The Subordinate Judge, Pattukottai.

2. The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr. D.R. MURUGESAN, ADVOCATE IN SR NO. 18391

+1CC TO MR. K. GUHAN, ADVOCATE IN SR NO. 13689

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and

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RG.10.04.2015

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