



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.06.2015

CORAM:

THE HONOURABLE Mr. JUSTICE K.K. SASIDHARAN

C.R.P.PD (MD) No.955 of 2013

and

M.P. (MD) No.1 of 2013

Sri Subramaniaswamy Kovil,
Rep.by its Hereditary Trustee V.Ganesan

... Petitioner/Petitioner/
Plaintiff

Vs.

J.Arul Josephine Mary Asha

... Respondent/Respondent/
Defendant

PRAYER: Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 09 January, 2013 made in I.A.No.498 of 2012 in O.S.No.336 of 2008 on the file of the II Additional Subordinate Judge, Tiruchirappalli and allow the Civil Revision Petition.

For Petitioner : Mr.J.Maria Roseline
For Respondent : Mr.R.Sundar Srinivasan

O R D E R

The petitioner filed an application in I.A.No.498 of 2012 in O.S.No.336 of 2008 before the learned II Additional Sub Ordinate Judge, Trichirapalli, to direct the Advocate Commissioner to survey the property with the help of a Surveyor by utilizing the certified copy of the filed measurement book. The application was dismissed by the Trial Court primarily on the ground that sub-division does not find place in Ex.R1. The learned Trial Judge was of the view that the Surveyor can measure only in accordance with the approved plan.

2.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3.The petitioner wanted the Surveyor to measure the property with reference to survey documents. The petitioner placed reliance on Ex.B2, on the basis of which, the Temple obtained a decree in O.S.No.2458 of 1982.

4.The petitioner only wanted to measure the property in the light of the survey documents. The learned Trial Judge has virtually given a finding with respect to the merits of the matter, while considering the application for appointment of an Advocate Commissioner. The order is therefore liable to be set aside.



5. In the result, the order dated 09.01.2013 made in I.A.No.498 of 2012 in O.S.No.336 of 2008 is set aside. The application in I.A.No.498 of 2012 is allowed.

6. The parties are permitted to submit work memo to the Advocate Commissioner to measure the property. The Advocate Commissioner appointed by the Trial Court should measure the property in accordance with the survey records and the work memo to be given by the concerned parties. The evidentiary value of the report submitted by the Advocate Commissioner on the basis of Survey records should be considered by the learned Trial Judge during trial.

7. The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

The II Additional Subordinate Judge,
Tiruchirappalli.

+One cc to M/s.R.Sundar Srinivasan, Advocate, SR.No.29968

nbg

RL/3 c- 23/7/2015

C.R.P.PD(MD) No.955 of 2013

09.06.2015