

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.2504 of 2013
& M.P.No.1 of 2013

1.P.Sudhakar
2.Poovalingam

.. Petitioners

Vs.

1.Balakrishnan
2.N.Karunakaran

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 05.09.2012 made in I.A.No.735 of 2012 in I.A.No.196 of 2008 in O.S.No.38 of 20098 on the file of the District Munsif Court, Sankari.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.K.Thangavelu

ORDER

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This Civil Revision Petition is filed against the fair and decretal order dated 05.09.2012 made in I.A.No.735 of 2012 in I.A.No.196 of 2008 in O.S.No.38 of 20098 on the file of the District Munsif Court, Sankari.

2. Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

3. The petitioners are defendants and respondents are plaintiffs in O.S.No.38 of 2008. The respondents filed the said suit for permanent injunction and mandatory injunction to restore the 312 Sq.ft of land encroached by the petitioners after demolishing the construction put up by them. The petitioners filed written statement on 30.06.2008 and are contesting the suit. Along with the plaint, the respondents filed I.A.No.196 of 2008 for appointment of Advocate Commissioner. In the said application, Advocate Commissioner was appointed. He inspected and measured the suit property and filed report along with the application on 20.07.2009. The petitioners filed objection to the report on 07.08.2009. The respondents filed I.A.No.520 of 2012 for amendment of the plaint based on the report of the Advocate Commissioner. The said application was allowed after contest. The petitioners filed I.A.No.735 of 2012 after 3 years of filing of the report, to scrap the report of the Advocate Commissioner and appoint some other Commissioner, directing him to fix the boundary in respect of the suit property with the help of District Surveyor, Salem.

4. According to the petitioners, the Advocate Commissioner appointed earlier in I.A.No.196 of 2008 did not properly measure the suit property, taking into consideration the memo of instructions given by the petitioners and measured the suit property and filed the report in favour of the respondents. The petitioners already filed objection on 07.08.2009 to the report of the Advocate Commissioner. In view of the same, the petitioners have come out with the present application. The learned Judge, considering the materials on record, dismissed the application.

5. From the materials available on record and order of the learned Judge, it is seen that the Advocate Commissioner has filed the report on 20.07.2009. The petitioners have filed the objection on 07.08.2009. But based on the report of the Advocate Commissioner, the respondents also filed application for amendment. The said application was allowed after contest. In the year 2012, the petitioners have come out with the present application to scrap the report of the Advocate Commissioner and for appointment of fresh Advocate Commissioner to measure the property with the help of District Surveyor, Salem. The prayer now

sought for is devoid of merits as the report of the Advocate Commissioner is not final and it does not decide the issue in the suit. It is only to assist the Court. The Court may accept the report or reject the same. The petitioners have already filed objection on 07.08.2009 and they have right to examine the Advocate Commissioner and prove that the report of the Advocate Commissioner does not reflect true and correct facts. The learned Judge, considering all the above facts and the fact that the petitioners did not raise these objections when they filed counter in I.A.No.520 of 2012, filed for amendment, based on the report filed by the respondents. The learned Judge has rightly dismissed the application by giving cogent and valid reason. In the result, I hold there is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 05.09.2012.

6. Accordingly, this Civil Revision Petition is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

09.11.2017

Index: Yes/No
gsa

To

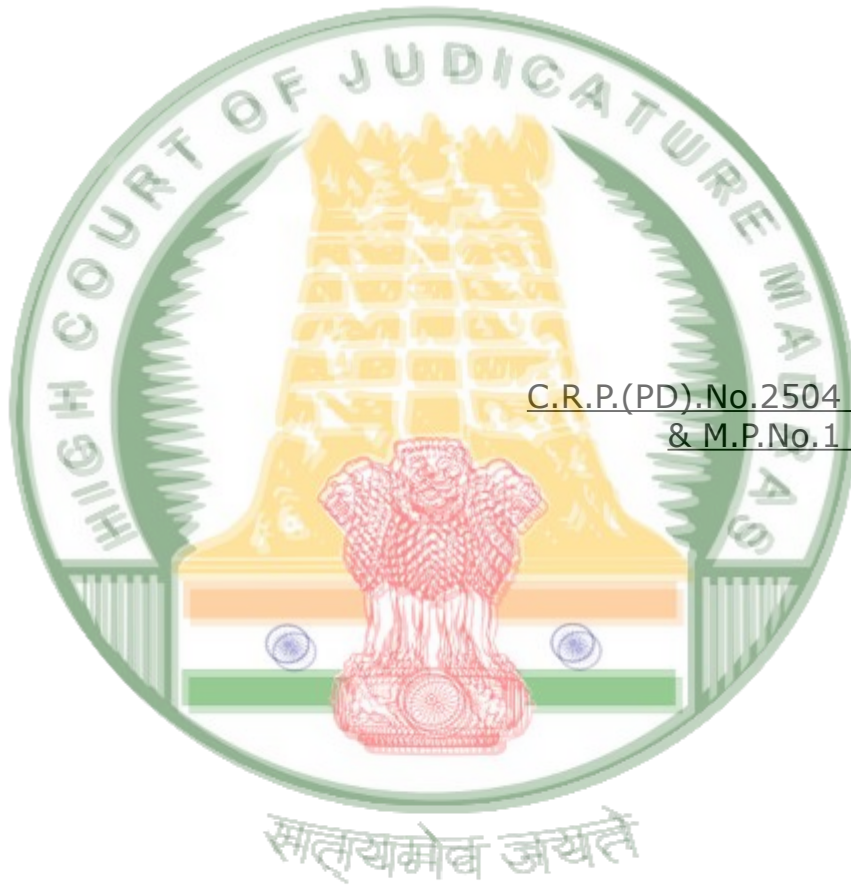
The District Munsif,
Sankari.



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V.M.VELUMANI,J.

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