

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2017

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

CRP.PD.No.3585 of 2008
and
C.M.P.No.1 of 2008

K.Girija @ Shanmugavalli ... Petitioner/Plaintiff
Vs.

S.Dakshinamoorthy ... Respondent/Defendant

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order made in I.A.No.2253 of 2008 in O.S.No.124 of 2003, on the file of the District Munsif Court, Alandur.

For Petitioner : Mr.A.Palaniappan

For Respondent : Mr.S.Balasubramaniam

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order made in I.A.No.2253 of 2008 in O.S.No.124 of 2003, on the file of the District Munsif Court Alandur.

2.The petitioner is the plaintiff and the respondent is the

defendant in the suit in O.S.No.124 of 2003 on the file of the learned District Munsif Court, Alandur. The petitioner filed the suit for permanent injunction restraining the respondent from her peaceful possession and enjoyment of the suit properties. The petitioner also filed I.A.No.658 of 2003 for interim injunction.

2.The respondent filed written statement in the suit and is contesting the suit. He also filed counter affidavit in I.A.No.2253 of 2008 contending that the property purchased by him is in Survey No.124/1. The petitioner is claiming the property as the owner of the property situated in Survey No.123 and said Survey Number is situate elsewhere and not in the property of the respondent. The petitioner filed I.A.No.1664 of 2006 for appointment of Advocate Commissioner to inspect and locate the suit property with the help of Taluk Surveyor. In the said application, the Advocate Commissioner was appointed, who inspected the said property with the help of Surveyor. However, the inspection could not be completed on the date of visit of the Advocate Commissioner and the same was postponed to 01.07.2008. On 01.07.2008, the petitioner and her counsel were not present and the Taluk Surveyor identified the property and also measured the same. The learned

Advocate Commissioner filed his report along with the report of the Taluk Surveyor. The petitioner filed her objections and filed the present petition in I.A.No.2253 of 2008 for re-issuance of warrant to the Advocate Commissioner.

3.The learned trial Judge, considering the fact that the Advocate Commissioner inspected the property and measured the suit property with the help of Taluk Surveyor who identified the property from the Revenue Records and filed report and that the petitioner and her counsel were not present at the time of second inspection, dismissed the application.

4.Against the said order of dismissal dated 06.09.2008, made in I.A.No.2253 of 2008, the petitioner has come out with the present Civil Revision Petition.

5. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the materials available on record.

6.The contention of the learned counsel for the petitioner that the Advocate Commissioner and the Taluk Surveyor did not identify the boundary and measure the property from the boundary stones and it necessitates to re-issue of warrant of commission, has no merit. The Taluk Surveyor identified the property with the help of Revenue Records and measured the property.

7.The petitioner has also filed her objections. It is well settled that the report of the Advocate Commissioner is only to assist the Court and the learned trial Judge can consider the same to arrive at correct conclusion. The petitioner has a right to examine the Advocate Commissioner and prove that the report of the Advocate Commissioner is not correct. The petitioner has filed the suit for permanent injunction restraining the respondent from interfering with her peaceful possession and enjoyment of the suit property.

8.In view of the relief sought for in the suit, it is for the petitioner to prove her possession and that the respondent is trying to interfere with her possession. The Advocate Commissioner has already identified the property with the help of the Taluk Surveyor.

In the said circumstances, there is no infirmity or irregularity in the order of the trial Court warranting interference by this Court.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.10.2017

AT/kal

To

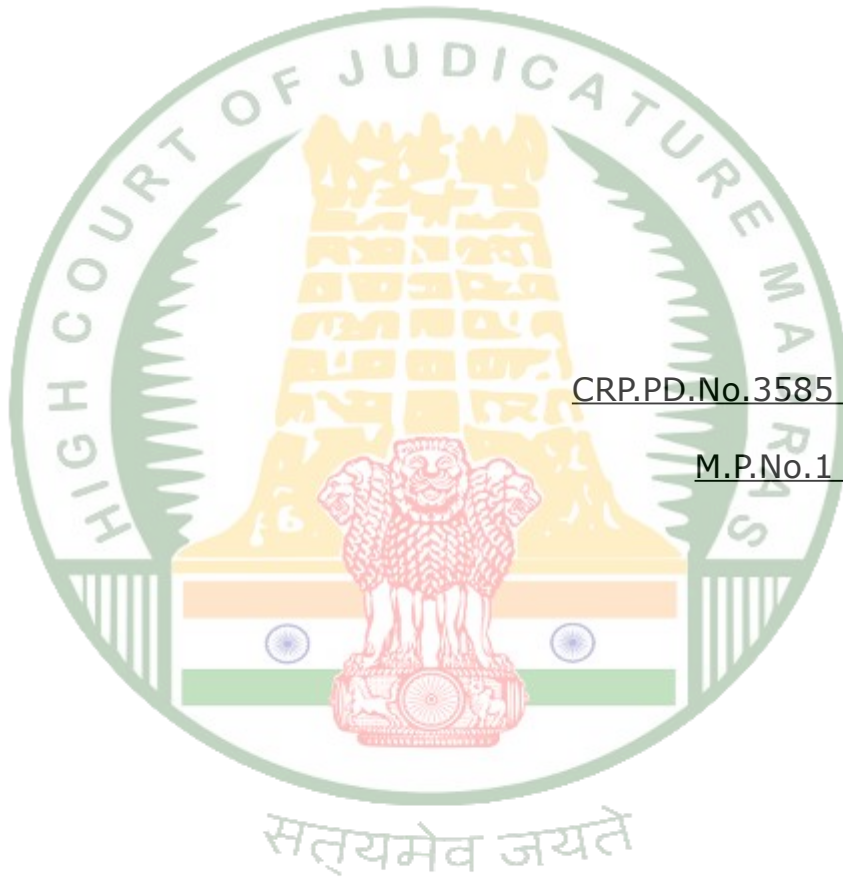
The District Munsif Court,
Alandur.



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V.M.VELUMANI,J.

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