



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.01.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(MD)Nos.89 & 90 of 2017(PD)
CMP(MD)Nos.315 & 316 of 2017

Santha ...Petitioner/Petitioner/Plaintiff
in both CRPs

Vs.

1. Gandhimathi
2. Venugopal ... Respondents/Respondents/Defendants
in C.R.P(MD)No.89 of 2017
Gandhimathi ..Respondent/Respondent/Defendant
in C.R.P(MD)No.90 of 2017

PRAYER in C.R.P.(MD)No.89 of 2017(PD): Civil Revision Petition is filed under Article 227 of Constitution of India to allow the Civil Revision Petition and set aside the fair and decreetal order of the District Munsif Court, Thuraiyur made in I.A.No.68 of 2016 in O.S.No.83 of 2003 dated 15.11.2016.

For Petitioner : Mr. V. Singan
For Caveator/
Respondents : Mr. P. Thiyagarajan

PRAYER in C.R.P.(MD)No.90 of 2017(PD): Civil Revision Petition is filed under Article 227 of Constitution of India to allow the Civil Revision Petition and set aside the fair and decreetal order of District Munsif Court, Thuraiyur made in I.A.No.123 of 2016 in O.S.No.315 of 2003 dated 23.11.2016.

For Petitioner : Mr. V. Singan

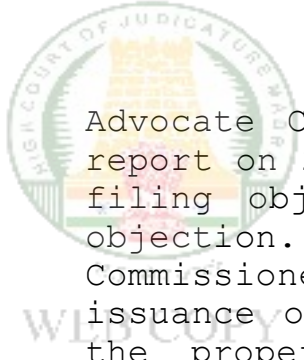
COMMON ORDER

Both parties are one and the same and the property are also one and the same and hence, both CRPs are disposed of by this common order.

2.The petitioner is the plaintiff in both the suits. Both the suits in O.S.No.83 of 2003 and O.S.No.315 of 2003 filed by the petitioner for permanent injunction restraining the respondents from interfering with her peaceful possession and enjoyment of the

<https://hcservices.courts.gov.in/hcservices/>

3.In O.S.No.83 of 2003, the second respondent filed I.A.No.182 of 2003 for appointment of Advocate Commissioner. The said application was allowed appointing Mr.D.Karthikeyan as Advocate Commissioner to inspect the suit property and file his report. The



Advocate Commissioner inspected the suit property and filed his report on 28.12.2004. The learned Judge granted two weeks time for filing objection to both parties. The petitioner did not file objection. After 12 years of filing report by Advocate Commissioner, the petitioner filed I.A.No.68 of 2016 for re-issuance of warrant to the same Advocate Commissioner to measure the property from western side of the respondents property. According to the petitioner, in the report filed by the Advocate Commissioner, he has mentioned the measurement from East to West as 44 feet, but he has not mentioned from which side he has measured the property. Therefore, the petitioner has filed the present application for re-issuance of warrant to the same Advocate Commissioner.

4.The respondent filed counter affidavit and opposed the said application and submitted that the Commissioner inspected and measured the suit property with the help of surveyor on 21.09.2003 in the presence of the petitioner and the respondent and their respective counsels. The Advocate Commissioner filed his report on 28.12.2004 itself. The petitioner did not file objection to the report of the Advocate Commissioner. After 12 years of the report of the Advocate Commissioner, the petitioner has come out with the present petition only to drag on the proceedings.

5.The learned Judge considering the averments made in the affidavit and counter affidavit and taking note of the fact that after taking several adjournments in the suit and when the suit was posted for trial, the petitioner has come out with the present application, in the suit for injunction, it is not necessary to measure the property as stated by the petitioner and dismissed the application filed by the petitioner for re-issuance of warrant to the same Advocate Commissioner.

6.Against the said order of dismissal, the petitioner has come out with the present Civil Revision Petition.

7.The learned counsel for the petitioner submitted that the learned Judge failed to see that the Advocate Commissioner measured the property only from the Eastern side of the property. If the property is measured from the western boundary of respondent, issue can be decided properly. The learned Judge dismissed the application erroneously as said order of dismissal is hypertechnic.

8.In support of his case, the learned counsel for the petitioner relied on the judgment reported in 2015(5) MLJ 189 *R.Malligeswari v. V.Munuswamy* and submitted that this Court held that the delay should not be taken as a ground for disposal of the application for re-issuance of warrant to the same Advocate Commissioner and prayed for allowing the Civil Revision Petition.

9.The learned counsel appearing for the respondents submitted that the suit is of the year 2003. The Advocate Commissioner was appointed and he inspected the suit property in the presence of their respective counsels and filed his report on 28.12.2004. The petitioner did not file any objection. The petitioner has taken number of adjournments to harass the respondents and to drag on the proceedings. He has filed application after 12 years from the date of filing of the report

of the earlier Advocate Commissioner and prayed for dismissal of the Civil Revision petition.

10.I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents in C.R.P.(MD)No.89 of 2017 also perused the entire materials on record.

11.The petitioner filed suit for permanent injunction restraining the respondents from interfering with her peaceful possession and enjoyment of the suit property. On application by the second respondent, Advocate Commissioner was appointed on 01.04.2003. The Advocate Commissioner inspected the property with the help of surveyor on 21.09.2003 in the presence of parties and their counsel and filed his report on 28.12.2004. The learned Judge has granted two weeks time for the parties, for filing objection. The petitioner did not file any objection. After 12 years from the date of report, he filed the present petition for re-issuance of warrant to the same Advocate Commissioner. The learned Judge dismissed the application on the ground that the suit is for injunction and it is for the petitioner to prove the alleged portion of the encroachment by the respondents and measuring the property from western boundary of the respondents not necessary to decide the issue in the suit. Further, it is pertinent to note that the suit is of the year 2003 and suit is posted for trial in the Special list. The learned Judge is directed to dispose the suit in O.S.No.83 of 2003 within three months from the date of receipt of a copy of this order.

12.In the result, the C.R.P.(MD)No.89 of 2017 is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

13.In C.R.P(MD)No.90 of 2017, the learned counsel for the petitioner submitted the plaintiff in O.S.No.315 of 2003 filed I.A.No.123 of 2016 for stay of the trial of the suit in O.S.No.315 of 2003 on the ground that he has filed I.A., for re-issuance of warrant to the same Advocate Commissioner in O.S.No.83 of 2003. Only after the order of re-issue of warrant of Commission to the earlier commissioner and till he file the report prayed for stay of the proceedings in O.S.No.315 of 2003.

14.In view of the order passed in C.R.P(MD)No.89 of 2017, this C.R.P.(MD)No.90 of 2017 is also dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

The District Munsif Court, Thuraiyur.

+2cc to Mr.V.Singan, Advocate, SR.Nos.3125 and 3126

<https://hcc.myservices.gov.in/MyServices/OneStopServices.aspx> Mr.P.Thiagarajan, Advocate, SR.No.2968

am

RL/5C/3P/MPA/SAR3/31.1.2017

C.R.P(MD)Nos.89 & 90 of 2017

18.01.2017