

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2018

Coram:

The Honourable Ms.Justice P.T.ASHA

C.R.P(PD).No.2562 of 2012

and

M.P.No.1 of 2012

1. V.Madesh
2. M.Govindaraj ...Petitioners

Versus

P.Manickavelu ...Respondent

PRAYER This Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the order dated 15.06.2012 passed in I.A.NO.153 of 2011 in O.S.No.2 of 2011 on the file of the II Additional District Court(Fast Track Court – I), Salem.

For Petitioners : Mr.A.Esakkiappan

For Respondent : No appearance

ORDER

This Civil Revision Petition is directed against the order dated 15.06.2012 passed by the learned II Additional District Judge(Fast Track Court -I, Salem) in I.A.NO.153 of 2011 in O.S.No.2 of 2011, in and by which the learned District Judge had directed the Advocate Commissioner to go ahead and submit the report by 16.07.2012 as per the earlier directions.

2. The facts in brief are as follows:

The respondent herein has filed a suit for permanent injunction in respect of two items of property which in the suit schedule has been described by Survey numbers, measurement, and specification. Pending the said suit which is filed on 23.12.2010, the respondent has come forward with an application in IA.No.153 of 2011, seeking the following relief:

"to order to appoint a Commissioner directing him to the petition mentioned property in Survey No.159/7 and 266/1 to measure of the entire suit properties and the properties of the Respondent/Defendants in accordance with sale deeds and title deeds of both parties and with the assistance of the qualified surveyor attached to Birka surveyor Avadathoor Village and as per (F.M.P) filed survey map with Assistance of Village Administrative Officer and also to note down such other points it will be pointed out to the Commissioner at the time of inspection and not down the physical futures and submit a report with a plan drawn to scale"

The learned District Judge has allowed the said application.

3. Pursuant to the said order, it appears that the Advocate Commissioner had visited the suit property on 12.05.2012 along with the Firka Surveyor and the Village Administrative Officer of Avadathoor Village. The Firka Surveyor has given a report dated 12.05.2012, wherein he has categorically stated that the suit description given in the suit schedule is not found in the Revenue records and without the appropriate suit description, he will not be in a position to measure the suit property. The Advocate Commissioner has also filed an interim report in which it is stated as follows:

"I have visited the suit property on 12.05.2012 after paid batta to Firka Surveyor and Village Administrative Officer of Avadhathur. On the stipulated day the Village Administrative Officer of Avadhathur village and Firka Surveyor of Nangavalli Firka were present while I was executing the warrant.

The warrant of Commission directed me to measure the property based on the sale deed and title deeds and with the help of qualified surveyor related to Avadathur village as per filed survey map.

On the spot the Village Administrative Officer of Avadhathur and Firka Surveyor of Nangavalli Firka gave me a joint memo stating

that No Sub division was made on their records and the boundaries mentioned in the sale deed are not correct. Hence they expressed their inability to measure the property....."

".....Since there is a contradiction of opinion persists between both parties and the Village Administrative Officer and Birka Surveyor also gave a memo and expressed their inability, under this circumstances the Advocate Commissioner was forced to wind up my commission to avoid conflict situation."

4. Despite such a categorical report that has been filed, the learned II Additional District Judge (Fast Track Court -I, Salem) has directed the Commissioner to once again inspect the property as per the earlier directions. Challenging the said order, the revision petitioner/defendant is before this Court.

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5. Heard Mr.A.Esakkiappan, learned counsel for the revision petitioner and perused all the records.

6. When the original order itself is to inspect the properties in the lines of the sale deed, title deed and Revenue records and the Revenue Officials have stated that they are unable to identify the

properties, it is not known as to how the learned II Additional District Judge, had once again directed the Advocate Commissioner to inspect the property in the lines of the earlier order which is nothing but a wasteful exercise. Unless, there is a new material, available before the Court below, such a order, in my opinion, will not achieve the purpose for which the inspection of two properties by the Advocate Commissioner is proposed.

7. In the result, the Civil Revision Petition is allowed and the order of the II Additional District Court(Fast Track Court – I), Salem I.A.NO.153 of 2011 in O.S.No.2 of 2011 dated 15.06.2012 is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

29.10.2018

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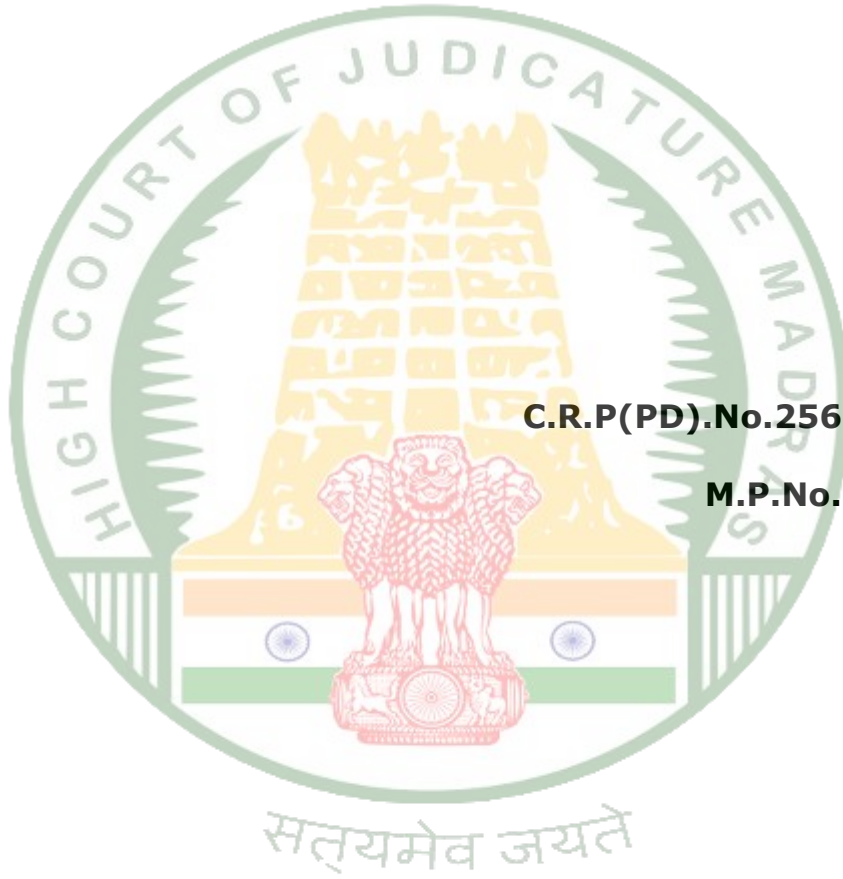
Index : Yes / No

Internet : Yes / No

Speaking Order/Non-Speaking Order

P.T.Asha, J.,

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