

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.676 of 2015
& M.P.No.1 of 2015

1.S.Sundaram
2.Pankajam

.. Petitioners

Vs.

P.Sundari

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 08.01.2015 made in I.A.No.211 of 2014 in I.A.No.625 of 2012 in O.S.No.103 of 2005 on the file of the District Munsif, Coonoor, the Nilgiris.

For Petitioners : Mr.A.Bobblie

For Respondent : Mr.K.F.Manavalan

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 08.01.2015 made in I.A.No.211 of 2014 in I.A.No.625 of 2012 in O.S.No.103 of 2005 on the file of the District Munsif, Coonoor, the Nilgiris.

2.The petitioners are the defendants and respondent is the plaintiff in O.S.No.103 of 2005 on the file of the District Munsif, Coonoor, the Nilgiris. The respondent filed the said suit against the petitioners for injunction, restraining them from putting up further constructions on the northern side of the suit property or within the northern boundary of the suit property and for mandatory injunction to remove the constructions already put up by the petitioners. The respondent filed I.A.No.625 of 2012 for appointment of an Advocate Commissioner. Advocate Commissioner was appointed. He inspected the suit property with the help of Taluk Surveyor and filed his report on 17.06.2014.

3.The petitioners filed objection to the report of the Advocate Commissioner on 26.06.2014. The petitioner filed the present application, I.A.No.211 of 2014 to set aside the report filed by the Advocate Commissioner appointed in I.A.No.625 of 2012 and to reissue the warrant of commission to fix the boundaries of the properties of the petitioners and respondent with the assistance of Taluk Surveyor. According to the petitioners, the Surveyor along with the Advocate Commissioner did not properly measure the property. The counsel for the petitioners gave memo of instruction to the Advocate Commissioner to fix the boundary stones first and

then measure the property. Taluk Surveyor without fixing the boundary stones according to his whims and fancies measured the suit property. The Advocate Commissioner did not request the Taluk Surveyor to fix the boundary stones and measure the property. The petitioners further stated in the affidavit that Taluk Surveyor measured the property on the petition given by the petitioners to District Collector, Nilgiris and submitted the report of the Taluk Surveyor, Coonoor wherein he has stated that petitioners have not encroached the property of the respondent and it is only the respondent who had encroached the property of the petitioners.

4.The learned Judge called for the counter from the Advocate Commissioner and on consideration of the counter affidavit filed by the Advocate Commissioner appointed earlier in I.A.No.625 of 2012 and all the materials on record, dismissed the application holding that the petitioners can file all the objections to the report and argue the case.

5.Against the said order of dismissal dated 08.01.2015 made in I.A.No.211 of 2014 in I.A.No.625 of 2012 in O.S.No.103 of 2005, the present Civil Revision Petition is filed by the petitioners.

6. Heard learned counsel for the petitioners as well as the respondent and perused the materials available on record.

7. From the materials on record and order of the learned Judge, it is seen that the petitioners have already filed objection to the report of the Advocate Commissioner. The report of the Advocate Commissioner is not final in deciding the issue in the suit. The Advocate Commissioner was appointed and was directed to file his report only to assist the Court. The Court may or may not accept the report of the Advocate Commissioner, after appreciating the evidence let in by the parties. It is open to the parties to examine Advocate Commissioner with regard to his report. In the present case, the petitioners have filed objection to the report of the Advocate Commissioner dated 17.06.2014 on 26.06.2014. In the present application, the learned Judge called for the counter from the Advocate Commissioner and after considering the same, dismissed the application holding that reissue of warrant of commission at this stage is not warranted and all the objections filed by the petitioners would be considered at the time of trial. There is no illegality or irregularity warranting interference by this Court in the order impugned in this revision.

8.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. Since the suit is of the year 2005, the learned District Munsif, Coonoor is directed to dispose of the suit as expeditiously as possible and in any event not later than three months from the date of receipt of a copy of this order.

17.01.2018

Index :: Yes/No
Internet :: Yes/No

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To

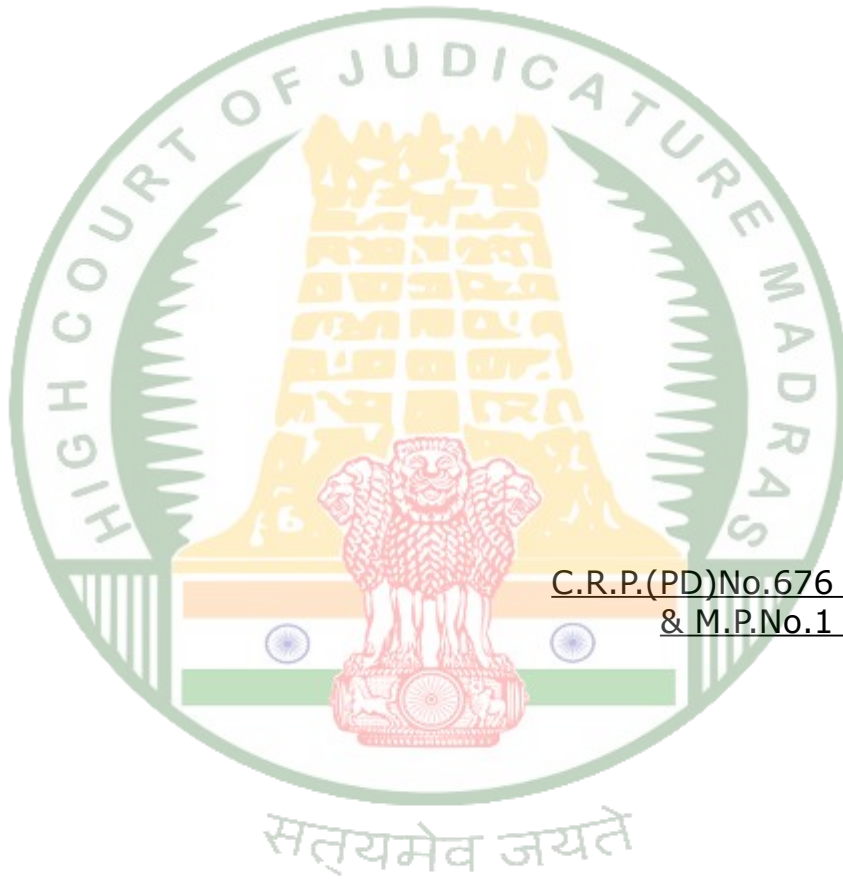
The District Munsif,
Coonoor,
The Nilgiris.

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V.M.VELUMANI,J.

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