

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.01.2018

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CIVIL REVISION PETITION (PD)Nos.3671 and 3672 of 2016
and
C.M.P.Nos.18661 and 18662 of 2016

C.R.P.No.3671 of 2016

T.Natarajan

.. Petitioner

VS

1.P.S.Sudhanthiramani

2.Gandhimathi

3.Pushpalatha

4.Sathyaveni

5.P.T.Shanmugam

6.Jeevarathinam

.. Respondents

The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 10.06.2016 made in I.A.No.241 of 2016 in I.A.No.76 of 2010 in O.S.No.122 of 2010 on the file of the learned Subordinate Judge, Sathyamangalam.

C.R.P.No.3672 of 2016

T.Natarajan

.. Petitioner

VS

1.P.T.Shanmugam

2.P.T.Kempraj

3.Jeevarathinam

4.P.S.Sudhanthiramani

5.Gandhimathi

6.Pushpalatha

7.Sathyaveni

.. Respondents

The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 10.06.2016 made in I.A.No.242 of 2016 in I.A.No.90 of 2010 in O.S.No.135 of 2010 on the file of the learned Subordinate Judge, Sathyamangalam.

For Petitioner

... Mr.V.P.K.Gowtham
for both petitions

For Respondents

... Mr.I.C.Vasudevan
(for R.1 to R.6
in C.R.P.No.3671 of 2016
for R.1 and R.3 to R.6
in C.R.P.No.3672 of 2016

ORDER

These Civil Revision Petitions have been filed to set aside the fair and decretal order dated 10.06.2016 made in I.A.No.241 of 2016 in I.A.No.76 of 2010 in O.S.No.122 of 2010 and the order dated 10.06.2016 made in I.A.No.242 of 2016 in I.A.No.90 of 2010 in O.S.No.135 of 2010 on the file of the learned Subordinate Judge, Sathyamangalam.

2. The brief facts of the cases are as follows:

(i)The respondents in C.R.P.No.3671 filed a suit in O.S.No.122 of 2010 for declaration along with an application in I.A.No.76 of 2010 to appoint an Advocate Commissioner to note down and measure the existing physical features in the suit property and fix the stone for all the boundaries as per the registered partition deed in Doc.No.2337/1951 before the S.R.O Punjai Puliampatti, with the help of a Taluk surveyor and file a report.

(ii)The petitioner in C.R.P.No.3672 filed a suit in O.S.No.135 of 2010 for permanent injunction and I.A.No.90 of 2010 under Order 26 Rule 9 and Section 151 C.P.C. seeking to appoint an Advocate Commissioner to measure and fix the boundaries in accordance with

the partition deed dated 29.09.1951 and to file a report and sketch. Accordingly, an Advocate Commissioner was appointed by the Court below and the said Advocate Commissioner measured the suit properties with the help of a surveyor and filed a report dated 06.04.2016 along with the sketch.

(iii) The first defendant in O.S.Nos.122 of 2010 and the plaintiff in O.S.No.135 of 2010 filed objections against the report submitted by the Advocate Commissioner in I.A.Nos.76 of 2010 and 90 of 2010. Aggrieved with the report of the Advocate Commissioner, he also filed I.A.No.241 of 2016 in I.A.No.76 of 2010 in O.S.No.122 of 2010 under Section 151 C.P.C. to scrap the report of the Advocate Commissioner and filed I.A.No.242 of 2016 in I.A.No.90 of 2010 in O.S.No.135 of 2010 for the very same relief. The learned Subordinate Judge dismissed both the I.A.Nos.241 and 242 of 2016 by separate orders dated 10.06.2016. Challenging the said orders, the present Civil Revisions Petitions are filed before this Court.

3. Heard the learned counsel for the revision petitioner, the learned counsel for the respondents and perused the materials available on record in both petitions.

4. The learned counsel for the revision petitioner submitted that a Memo of objection was filed by the petitioner at the time of inspecting the suit property. But, the Advocate Commissioner, without considering the said Memo of objection, submitted his report along with sketch. Therefore, I.A.Nos.241 and 242 of 2016 have been filed to scrap the report and sketch and also to appoint the same Advocate Commissioner to revisit, inspect, note down and measure the existing physical features of the suit property. The Court below, without taking into account the memo of objection and without considering the request of the petitioner simply dismissed both the applications without assigning any proper reasons. The learned counsel further submitted that the Advocate Commissioner had transgressed the warrant and surveyed the poramboke land other than the suit properties with several contradictions regarding the existence of the channel and pathway. Hence, the orders passed in both the Interlocutory applications are liable to be set aside.

5. The learned counsel for the respondents submitted that the Advocate Commissioner has rightly fixed the boundaries, after measuring the suit properties with the help of Surveyor, had filed his report and sketch before the Court below. There is nothing wrong in

the report and sketch submitted by the Advocate Commissioner. Therefore, the Court below has rightly dismissed both the applications and no interference is warranted by this Court.

6. Considering the submissions of the learned counsel for both sides, to give one more opportunity to the petitioner, this Court is inclined to pass the following orders:

"(i)The orders passed in I.A.Nos.241 of 2016 in I.A.No.76 of 2010 in O.S.No.122 of 2010 and I.A.Nos.242 of 2016 in I.A.No.90 of 2010 in O.S.No.135 of 2010 by the Court below are set aside.

(ii)The learned Subordinate Judge, Sathyamangalam is directed to pass appropriate orders appointing the same Advocate Commissioner to revisit and inspect the suit property and to submit a fresh report on the basis of the memo of objections filed by the petitioner at the time of earlier inspection conducted by the Advocate Commissioner.

(iii)The Civil Revision Petitions are allowed with above directions.

(iv)No order as to costs. Consequently, connected Miscellaneous Petitions are closed."

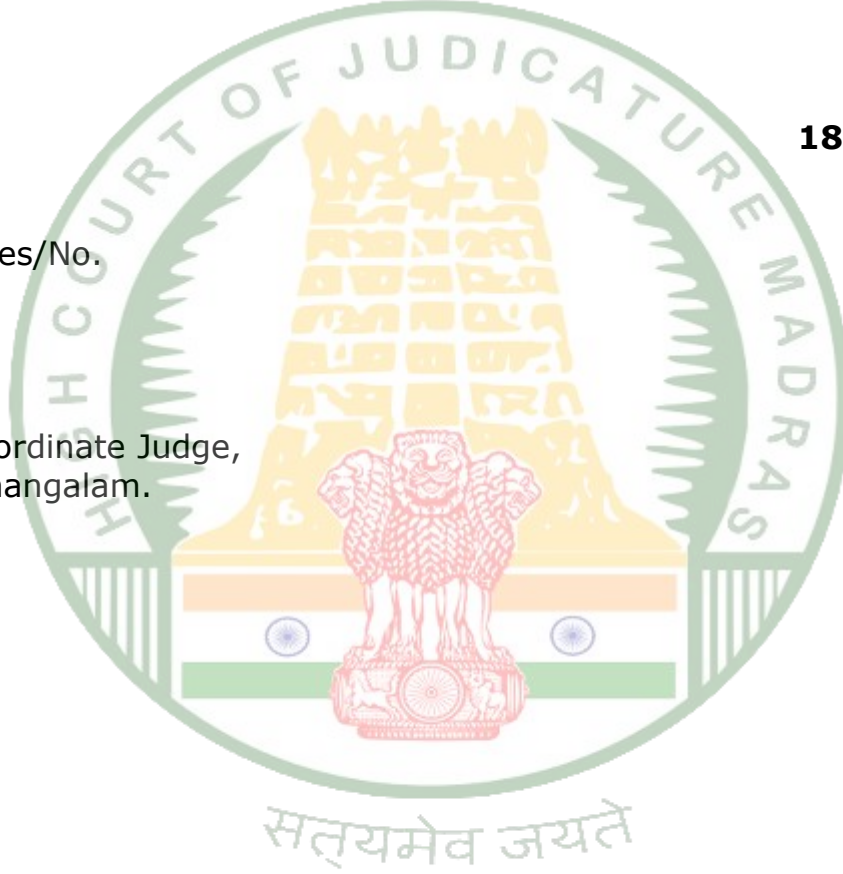
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Index: Yes/No.

To

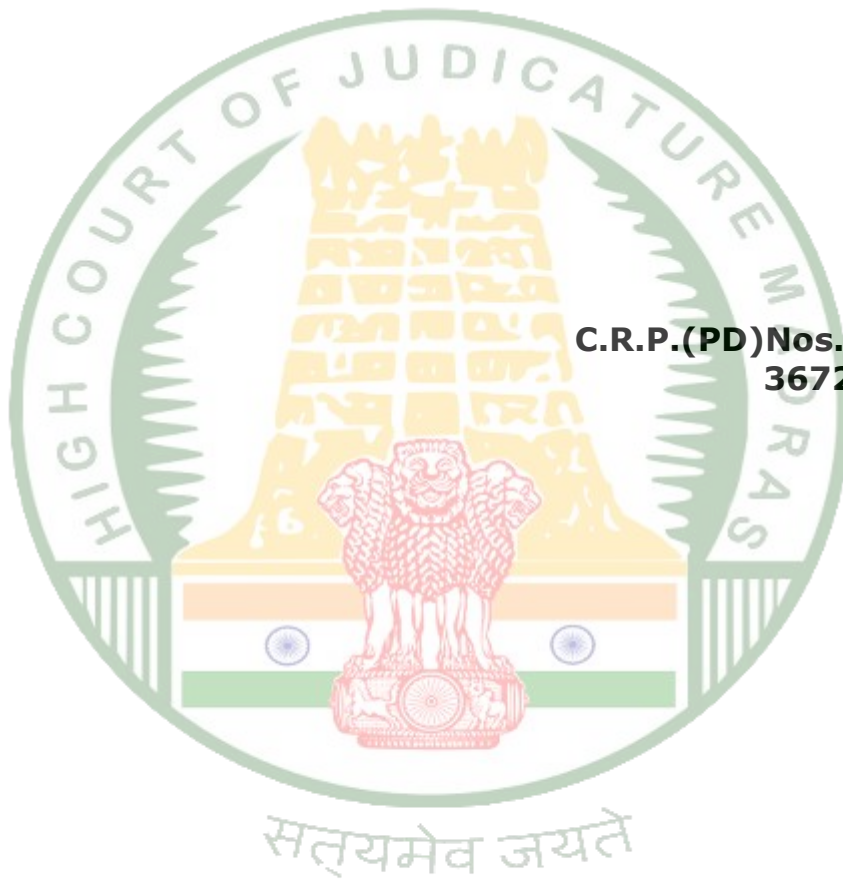
The Subordinate Judge,
Sathyamangalam.

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D.KRISHNAKUMAR,J.
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**C.R.P.(PD)Nos.3671 and
3672 of 2016**

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Date: 18.01.2018