

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.No.836 of 2019
and
C.M.P.No.5465 of 2019

1.Vijayakumar
2.Bakkiam ... Petitioners/
Defendants 1 and 5/Petitioners

Vs

1.Senthil Kumar
2.Rajkimar
3.Bothiammal
4.Santhosam ... Respondents/
Plaintiffs/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 02.11.2018 made in I.A.No.727 of 2018 in I.A.No.606 of 2011 in O.S.No.312 of 2011 on the file of the learned Additional District Munsif, Namakkal.

For Petitioners : Mr.V.R. Annagandhi

For Respondents: Mr. R. Prabakar

ORDER

The above Civil Revision Petition is filed challenging the order of the learned Additional District Munsif, Namakkal, in dismissing the application I.A.No.727 of 2018 filed by the defendants 1 and 5 seeking reissue of the warrant for measuring the suit pathway and the suit property demarcating the same, measuring it and thereafter submitting the report along with the plan.

The facts in brief which are necessary for disposing of the above Civil Revision Petition are as follows:

2.The respondents herein are the plaintiffs in the suit O.S.No.312 of 2011 filed for a declaration and mandatory injunction directing the defendants to restore the 3 feet pathway to its original extent and course.

3.Pending the suit, the plaintiffs had taken out an application in I.A.No.606 of 2011 for appointing an Advocate

Commissioner to measure the suit property, to note down the physical features of the suit property and to submit the report along with the plan. The Advocate Commissioner has made a preliminary visit in the year 2011 and submitted her report dated 19.01.2012. In the said report, the Advocate Commissioner has noted down the course of the pathway, the encroachment that has been made and the place where the pathway has been damaged. Thereafter, the Advocate Commissioner has finally visited the property once again (the third time) on 21.07.2012 and had submitted her final report. There is no objection filed by the defendants to the preliminary report dated 19.01.2012 or the final report dated 18.12.2012.

4. When the matter was posted for the defendants' side evidence, the revision petitioners have come forward with the impugned petition seeking reissue of warrant to the Advocate Commissioner. The said application was dismissed. Challenging the same, the revision petitioners are before this Court.

5.Mr.V.R.Annagandhi, learned counsel appearing for the revision petitioners would contend that sugar cane crops were standing in the lands when the Commissioner earlier visited the property and the measurement could not be properly taken and after the crops have been cut, to revisit the property the application has been filed. The learned counsel would also argue that his client was not served with the notice and had not participated in the proceedings of the Advocate Commissioner.

6.Per contra, R. Prabakar, learned counsel appearing for the respondents would contend that it was the defendants, who had deliberately prevented the Advocate Commissioner from executing the warrant and it was only on third occasion, the Commissioner could execute his warrant. He would further contend that the application filed without seeking for scrapping the earlier Commissioner's report is not maintainable. He would also argue that the report would clearly show the standing crops

and there was no hindrance to inspect the property.

7. Heard the learned counsel appearing for the revision petitioners and the learned counsel appearing for the respondents and perused the material on record.

8. As rightly pointed out by the learned counsel for the respondents, in the Advocate Commissioner's report, the crops standing in the lands had in no way hindered the Advocate Commissioner or the Surveyor from measuring the property as well as the suit pathway. Reading of the initial report dated 19.01.2012 would indicate the details that the Advocate Commissioner has gone into to show the encroachment on the pathway, the crops grown either side, etc., which would clearly prove that the Advocate Commissioner has diligently carried out his warrant. The final report once again shows that despite they have been present, the 1st defendant/revision petitioner has not only refused to sign in the notice but also walked out prior to the

Advocate Commissioner executing her warrant. When the matter is posted for trial, particularly, the defendants' side evidence, the revision petitioners have come forward with the present application, which is nothing but a ploy to drag on the proceedings. The suit is of the year 2011 and the final report had been filed as early as on 18.10.2012 and the defendants 1 and 2 had not moved a little finger till the matter is listed. Hence, there is no infirmity in the order of the learned Additional District Munsif, Namakkal.

This Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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13.03.2019

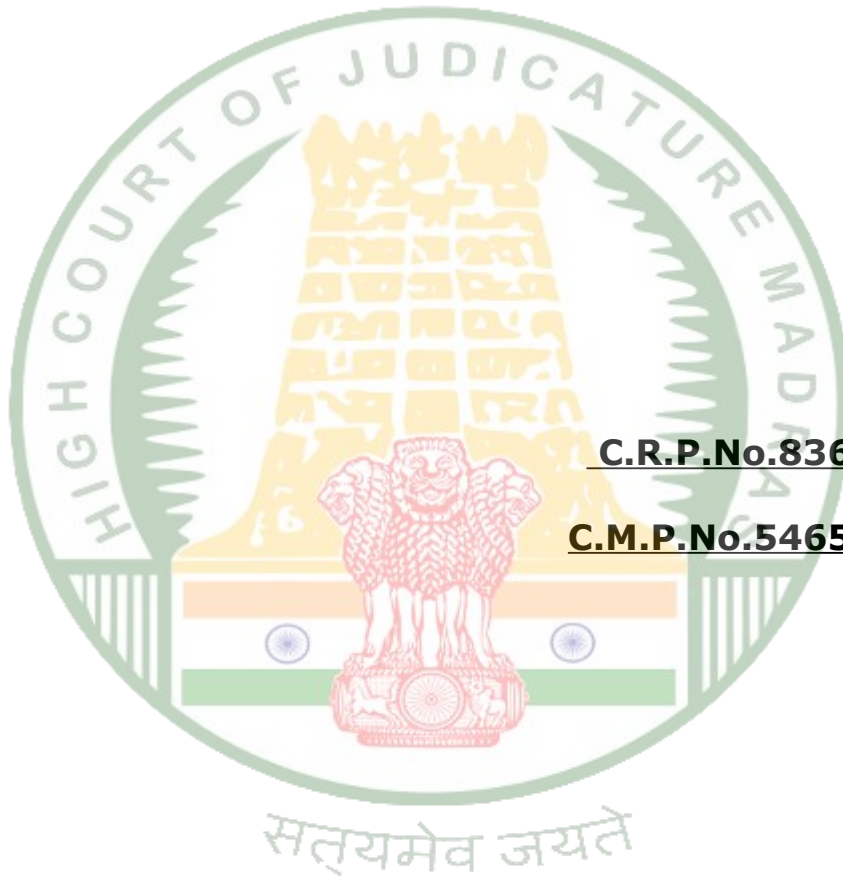
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To

The Additional District Munsif,
Namakkal.

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P.T. ASHA, J,

mps



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