

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2019

CORAM

THE HONOURABLE **Mr.JUSTICE N. SATHISH KUMAR**

CRP.NPD.No.1410 of 2011
and M.P.No.1 of 2011

N.Raja (died)

1. N.Subramani
2. N.Bose Gounder
3. K. Rajendran

... Petitioners/Defendants

Vs

C.Munusamy (died)

1. C.Chinndurai
2. C.Govindaswamy
3. C.Ganesan
4. M.Aparoopamma
5. M.Rajendran
6. M.Mallika
7. M.Manoharan
8. M.Valliammal
9. M.Ambiga
- 10.M.Nagammal
- 11.M.Vijaya
- 12.M.Mahalingam
- 13.M.Balaji

... Respondents/Plaintiffs

Prayer : Civil Revision Petition filed under Section 115 of Civil Procedure Code against the order and decree made in E.A.No.68 of 2010 in E.P.No.389 of 2004 in O.S.No.415 of 1988 on the file of the District Munsif, Gudiyattam, Vellore District dated 25.02.2011.

For Petitioners : Mr.K.A.Ravindran

ORDER

As against the order of the Execution Court for appointing the Commissioner to measure the property based on the FMB sketch to find out is there any encroachment by the revision petitioner, the present revision is filed.

2. The suit has been originally filed for declaring the plaintiffs right and title over the suit property and also injunction in respect of the suit property based on the patta and UDR. O.S.No.415 of 1988 has been decreed with the above decree. Thereafter, an Execution Petition viz., E.P.No.389 of 2004 has been filed alleging that the revision petitioner disobeyed the decree, thereby, he should be sent to the Civil Prison. In Execution Court, Mr.Subramani, Advocate is appointed as Commissioner to find out is there any encroachment and he has filed a Report. The Commissioner's Report indicate that the decree holder is the owner of S.No.474/5 and the revision petitioner is the owner of S.No.474/4, whereas, the encroachment allegedly found in S.No.474/3 where the alleged encroachment found by the Commissioner belongs to somebody. At this stage, the decree holder has filed a second application for measuring the property based on the FMB sketch.

The trial court appointed the Commissioner once again to measure the property based on the FMB Sketch.

3. Heard the learned counsel appearing for the revision petitioners.

4. Admittedly, earlier Commissioner's Report is very much available on record. The Trial Court ought to have decided whether the alleged encroachment shown in the above plan made by the revision petitioner are not in the absence of deciding the alleged disobedience based on the Report. The Court cannot go beyond the Commissioner's Report to measure the property on the basis of the original FMB. In fact, the suit itself filed on the basis of UDR not on the basis of FMB. Such being the position, once again measuring the properties in the Execution Petition is nothing but redoing the exercise once again.

5. The VAO was examined before the Execution Court. In his evidence, he stated that the portion of the properties has already fall within the boundaries of Andhra Pradesh. The above aspect is also not taken into consideration by the Execution Court in the Execution proceedings. The Court ought to have seen whether there is any disobedience by the revision petitioner by encroaching the property and

whether such encroachment has made after the date of decree or not. The Commissioner's Report makes it very clear that encroachment found by him is situated in some other survey number which is not connected to the revision petitioner. In such view of the position, again appointing the Commissioner for measuring the property with FMB sketch in my view would not serve any purpose. Hence, the order of the trial Court is set aside. The trial Court first decide the issue based on the earlier Commissioner's Report which is already available, then take necessary call whether re-visiting by the Commissioner is necessary to find out with the alleged disobedience.

6. With the above observation, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

25.04.2019

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Index:Yes/No

Internet:Yes/No

Speaking order: Non-speaking order

To

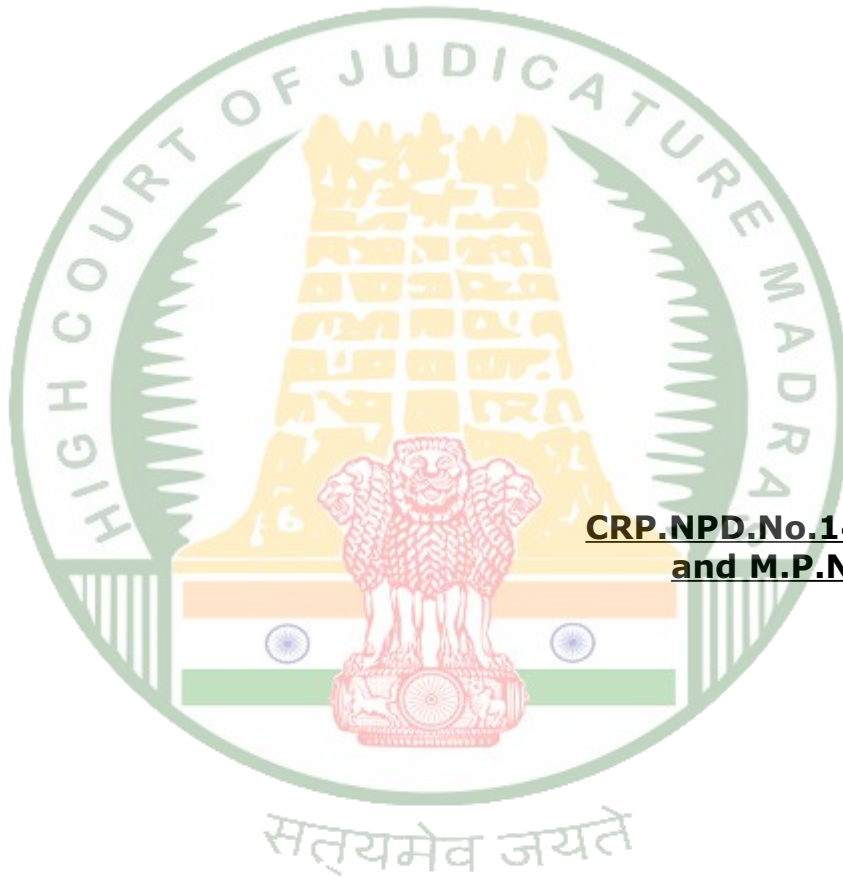
The District Munsif,

Gudiyattam, Vellore District

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N. SATHISH KUMAR,J.

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