

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18..12..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.2612 of 2015
and
M.P.No.1 of 2015

Kavithamani

.... Petitioner/Petitioner/Petitioner/Plaintiff

-Versus-

- 1.State of Tamil Nadu,
Rep. by its District Collector,
Erode District.
- 2.The Tahsildar,
Taluk Office,
Perundurai.
- 3.The Assistant Director,
Panchayats, Collectorate,
Erode District.
- 4.The Executive Officer,
Karumandisellipalayam Town Panchayat,
Perundurai Taluk,
Erode Distict.

5.Kolandhasamy

.... Respondents/Respondents/
Respondents/Defendants

Petition filed under Article 227 of the Constitution of India, praying to set asid the fair & final order dated 11.12.2014 made in I.A.No.345 of 2014 in I.A.No.197 of 2011 in O.S.No.30 of 2011 by the Subordinate Court, Perundurai, Erode District.

For Petitioner

: Mr.S.Kaithamalai Kumaran

For Respondent(s)

: Mr.N.Manikandan, GA for R 4

Mr.C.Munusamy for R5

ORDER

This revision petition is directed against the order of the learned Subordinate Judge, Perundurai, Erode District, dismissing the application filed by the petitioner to issue a Warrant of Commission to the Advocate Commissioner to measure the suit schedule property with the help of a Taluk Surveyor based on an old Field Measurement Book (FMB) in respect of Field Survey No.791 of Karumandisellipalayam village, Perundurai Taluk, Erode District.

2. The petitioner, who is the plaintiff in the suit, has filed the suit in O.S.No.30 of 2001 praying for a decree for mandatory injunction (i) directing the respondents 1 and 2 to measure the suit properties along with the properties lying on either side in order to fix the 'F' line for the suit properties based on the title document as well as revenue records by Taluk Surveyor by way of mandatory injunction; (ii) directing the defendants 1 and 2 to issue patta in favour of the plaintiff in respect of the suit properties and (iii) for permanent injunction restraining the defendants 1 to 4, their subordinates, men, agents, etc., from in any way and in any manner either encroaching the suit properties or putting up any permanent constructions thereon.

3. The petitioner has filed the suit seeking the above reliefs based on a sale deed dated 26.08.1983 standing in the name of her father and a subsequent settlement deed dated 06.02.2008 executed in her favour by her father. Pending suit, the petitioner filed an application to appoint an Advocate Commissioner to measure the suit property and the adjacent property based on the respective title deeds as well as the revenue records with the help of a Taluk Surveyor, fix the boundaries for the suit property and also to note down the physical features of the same. That application was allowed by the trial court. Pursuant to the same, the Advocate Commissioner had also inspected the properties in question and after inspection he had filed a report along with a rough plan. Thereafter, the application under revision came to be filed seeking to issue a direction to take into consideration the FMB extract pertaining to Field S.No.791 which was filed in an earlier suit in O.S.No.474 of 1984 by the 5th respondent against the father of the plaintiff. That application has been dismissed by court below. Challenging the same, the plaintiff in the suit has come forward with this revision petition.

4. This civil revision petition is coming up today for admission. I have heard the learned counsel for the petitioner and the learned counsel for the 5th respondent and the learned Government Advocate for respondents 1 to 4 and also perused the records carefully.

5. The earlier application filed by the petitioner for appointment of Advocate Commissioner was allowed and the learned Advocate Commissioner had also executed the warrant and filed his report along with a rough plan. Thereafter, the application under revision came to be filed for appointment of Advocate Commissioner to measure the suit schedule property again, with the help of a Taluk Surveyor, based on an old FMB which had been filed in an earlier suit filed by the 5th respondent against the father of the petitioner. The petitioner claims right over the property through a sale deed in the name of her father and a subsequent settlement deed executed by her father in her favour. She had sought for appointment of Advocate Commissioner to measure the suit schedule property again and fix the boundaries of the same based on the sale deed and settlement deed. Already, at the instance of the petitioner the court below appointed an Advocate Commissioner, who in turn after inspection of the property filed his report before the court below. While so, the petitioner had filed another application which is the subject matter of the revision without assigning any valid reason for appointment of Advocate Commissioner to measure the suit schedule property again with reference to a FMB extract filed in the earlier suit between her father and the 5th respondent herein. The court below on considering the available materials has rightly dismissed the application on the ground that the prayer cannot be maintained. This court does not find any irregularity or illegality in the order passed by the court below. Thus, there is no merit in the revision petition and the same is liable only to be dismissed. However, considering the fact that the suit is pending since 2011, the court below is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order.

In the result, this Civil Revision Petition is dismissed, however, with the above direction. No costs. Consequently, connected CMP is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk

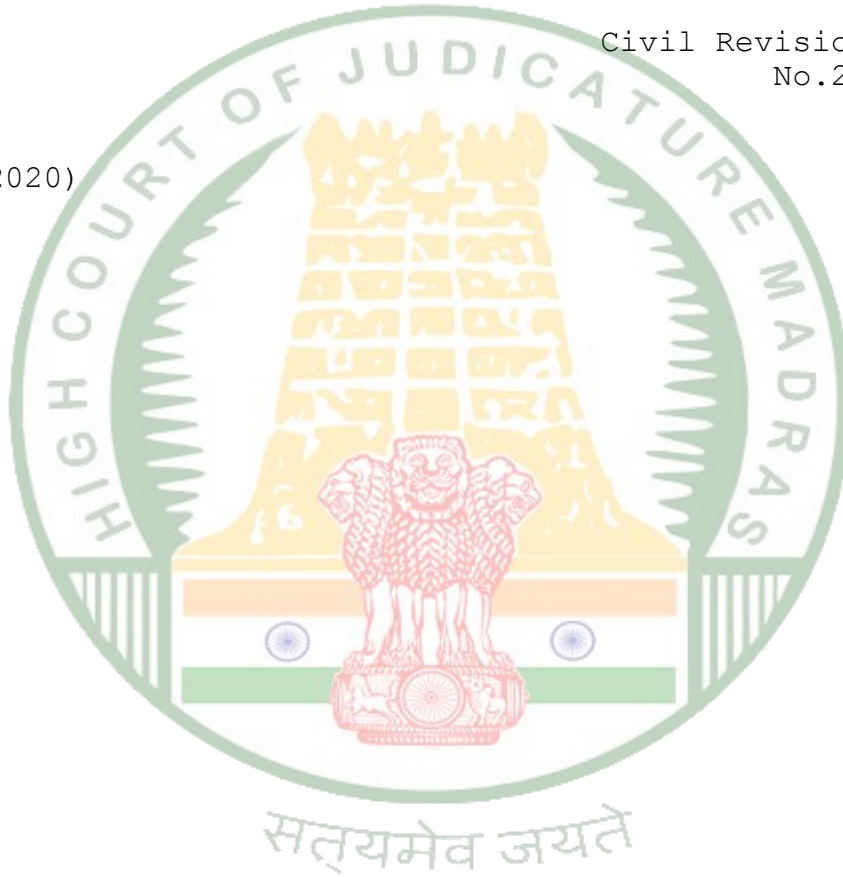
To

1.The Subordinate Judge,
Perundurai, Erode District.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.105554
+1cc to Mr.C.Munusamy, Advocate SR.105565
+1cc to Mr.S.Natana Rajan, Advocate SR.105523
+1cc to the Spl.Government Pleader SR.105586

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RLD(CO)
CB(01/10/2020)



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