

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (PD) No.3849 of 2013 &

M.P.No.1 of 2013

Mr.Veerasley .. Petitioner

Vs.

Mrs.Kalaiselvi .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India against the Order and decretal Order made in I.A.No.373 of 2012 in I.A.No.115 of 2011 in O.S.No.295 of 2010 dated 22.04.2013 on the file of the Principal Subordinate Judge, Chengalpet.

For Petitioner : Mr.M.S.Subramanian

For Respondent : Mr.K.Goviganesan

ORDER

This revision has been filed as against the Order of the trial Court in allowing the application filed by the plaintiff to scrap the Commissioner Report filed in I.A.No.115 of 2011 and appoint a new advocate Commissioner. The Court below scrapped the Commissioner Report filed in I.A.No.115 of 2011.

Challenging the same, this revision has been filed.

2. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent and perused the materials available on record.

3. The suit has been originally filed for declaration and mandatory injunction and also for recovery of possession in respect of 'A' and 'B' schedule properties. It is the main allegation of the plaintiff that the defendant has encroached upon 'BCDG' portion shown in the plaint plan. Whereas, it is the contention of the defendant that he never encroached as stated by the plaintiff and he has purchased the property from the previous owner and he has put up construction with the permission of the planning authority. When the matter stood thus, an application in I.A.No.418 of 2010 has been filed for appointment of an Advocate Commissioner to measure 'A' and 'B' schedule properties. The Commissioner has filed a report pointing out certain encroachments. The above Commissioner has not taken the aid of the Taluk Surveyor at that time. Thereafter, the second application has been filed objecting the previous Commissioner's Report. The trial Court rightly redirected the same Advocate Commissioner to inspect the suit property with the help of a Taluk Surveyor. Thereafter, the Advocate Commissioner had filed a second report along with Taluk Surveyor Report. The objection of the plaintiff is that at the time of measurement the southern portion was not measured and the boundaries were

not measured. Therefore, sought to reissue Commission by scraping the above Report and the trial Court has allowed the application.

4. The fact remains that the trial Court having scrapped the second Commissioner's Report is not correct. The first Commissioner Report has been filed on 29.11.2010 and the trial Court ought to have scrapped both the Commissioner Reports while appointing the third Commissioner. Therefore, the trial Court appointing an Advocate Commissioner by reissuing Warrant with a direction to measure the property with the help of a Taluk Surveyor. Such Order of trial Court does not require any interference. However, it is made clear that both the Commissioner's Report in filed in I.A.Nos.115 of 2010 and 418 of 2010 are liable to be scrapped. The trial Court shall take into consideration of the Commissioner Report to be filed by the Commissioner appointed by the Court in I.A.No.373 of 2012.

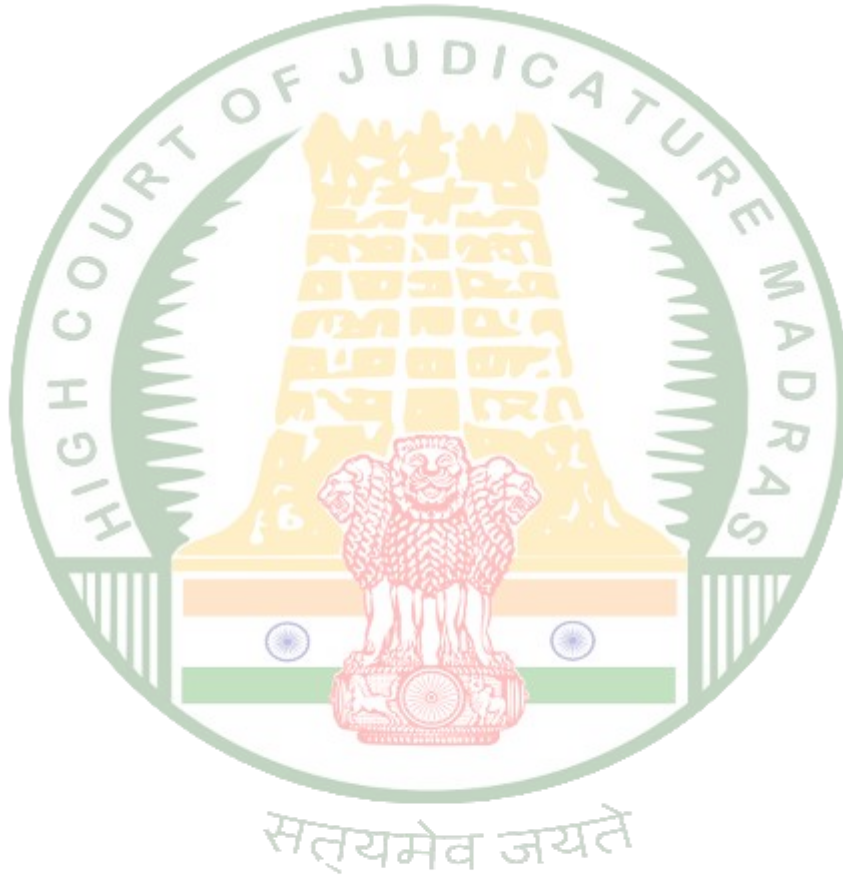
5. With the above observations, this Civil Revision Petition is disposed of. The trial Court is further directed to dispose of the suit within 6 months from the date of receipt of a copy of this Court. Consequently, the connected miscellaneous petition is closed. No cost.

15.02.2019

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To

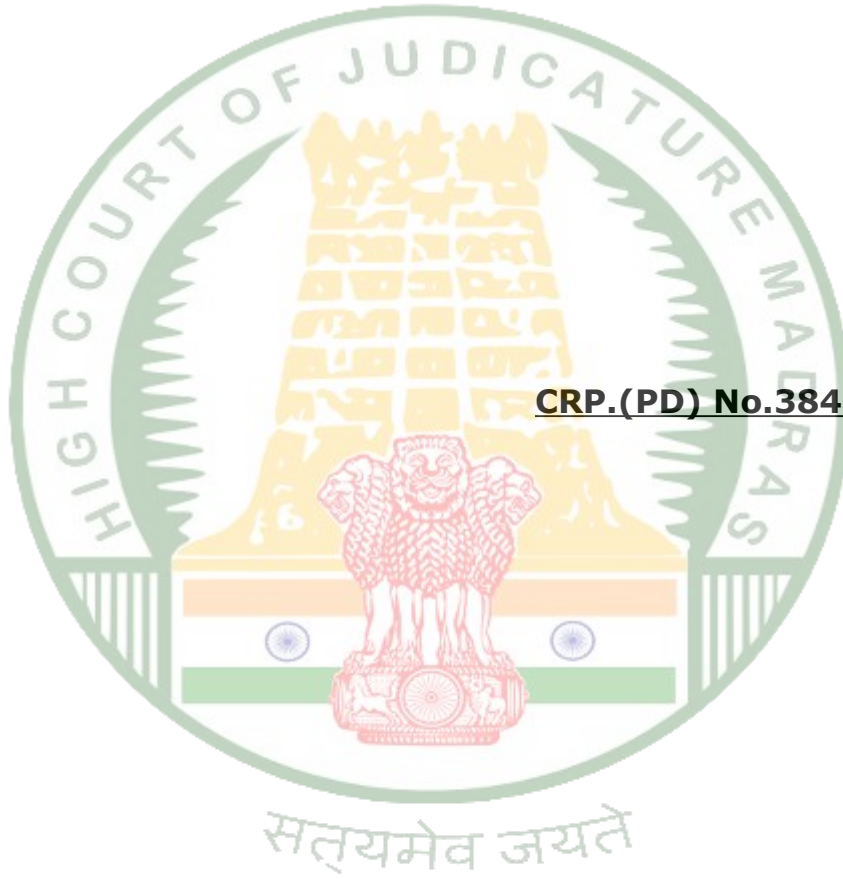
The Principal Subordinate Judge,
Chengalpet.



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N.SATHISH KUMAR, J.

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