

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2019

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP(PD).No.4786 of 2013

and

M.P.No.1 of 2013

1.Lakshumanan
2.Selvam
3.Venkatachalam

... Petitioners/
Defendants 1, 3 & 4

Versus

1.B.Santhosh
Rajendran (Died)

... 1st Respondent/
Plaintiff

2.Dhanalakshmi
3.Govindaraju
4.Velmurugan

... Respondents 4 to 6/
Proposed parties

(The respondents 2 to 4 are given up in the revision)

This Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 06.06.2013 in I.A.No.154 of 2012 in O.S.No.515 of 2010, on the file of the II Additional District Munsif, Salem.

For Petitioners	: Mr.D.Shivakumaran
For R1	: No appearance
For R2 & R4	: Given up

J U D G M E N T

This Civil Revision Petition has been filed against the order dated 06.06.2013 passed I.A.No.154 of 2012 in O.S.No.515 of 2010, by the learned II Additional District Munsif, Salem.

2 Respondents 2 to 4 given up. First respondent has refused to receive the summons and hence, amounts to sufficient service on the first respondent. None appeared for the first respondent today.

3 The first respondent herein has filed a suit O.S.No.515 of 2010, before the learned District Munsif, Salem, for permanent injunction, restraining defendants and their men from their in any manner interfering with the plaintiff's peaceful possession and enjoyment of the first item of the suit property, in particular, to restrain them from causing any mode of disturbance to him in the construction works; and permanent injunction, restraining the defendants and their men from their in any manner putting up any kind of bund or structure in the second item of the suit property and thereby, causing disturbance to the common enjoyment of the plaintiff.

4 In the written statement, the defendants have stated that it is only Lakshmanan, the first defendant, is exclusive owner of S.No.29/5C, excepting two cents on the north western corner, as the said two cents belongs to Perumal and later on, to one Bhagavathar, whose name also figures in the Joint Patta granted. It is only first defendant who is in continuous possession of S.No.29/5C excepting the two cents as stated above.

5 It is further stated in the counter that the claim of the plaintiff that S.No.29/5C is a common land is fraudulent. This defendant has cultivated banana in S.No.29/5C is strenghthly filed the suit as though it is a common property having obtained an order of injunction on 29.04.2010, the plaintiff along with his henchmen trespassed into the property, cut the banana trees in the yielding stage. Immediately, the second defendant has given a report to Steel Plant Police Station, who have also registered a case against the plaintiff and others under Section 147, 427 & 506(ii) of IPC and the matter is pending investigation.

6 During the trial, the plaintiff has examined PW1 & PW2 and for the defendants side evidence, the case was posted on 20.02.2012. On that day, the defendants have filed an application

in I.A.No.154 of 2012, before the learned II Additional District Munsif, Salem, for appointment of an Advocate Commissioner to note down the physical features in the description of property and measure the same with the help Sale Deed dated 24.02.1968 registered in favour of Lakshmanan and with the help of qualified surveyor in the presence of V.A.O with a further direction directing him to file the report with plan.

7 It appears that DW1 was already examined in full and 11 exhibits were marked on behalf of the defendants and hence, the learned District Munsif had dismissed the application. Hence, the revision.

8 After perusing the pleadings and evidence, the prayer in the suit is for permanent injunction and the second relief is restraining the defendants from putting up any kind of bund or structure in the second item of the suit property, as extracted supra.

9 On a perusal of the pleadings in the written statement, the title of the plaintiff is also disputed besides the details of the cultivation has also been noted therein. In view of the

specific evidence and also denial by the defendants, the purpose of Advocate Commissioner is to measure physical features viz., length and breadth in the said Survey No.29/5C, so as to resolve the dispute between the parties and also the individual relief asked for in the suit and hence, the reasoning of the learned II Additional District Munsif, Salem, that it is for creation of evidence on the point of possession does not arise on the above factual possession.

10 In the result, the Civil Revision Petition stands allowed and order dated 06.06.2013 passed in I.A.No.154 of 2012 in O.S.No.515 of 2010, by the II Additional District Munsif, Salem, is set aside and the Trial Court is directed to appoint an Advocate Commissioner to note down the physical features as sought in I.A.No.154 of 2012 and such Advocate Commissioner so appointed shall file a report after inspection within a period of nine weeks thereof and the Trial Court is directed to dispose of the suit within a period of twelve weeks after filing the Advocate Commissioner's Report in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

09.12.2019

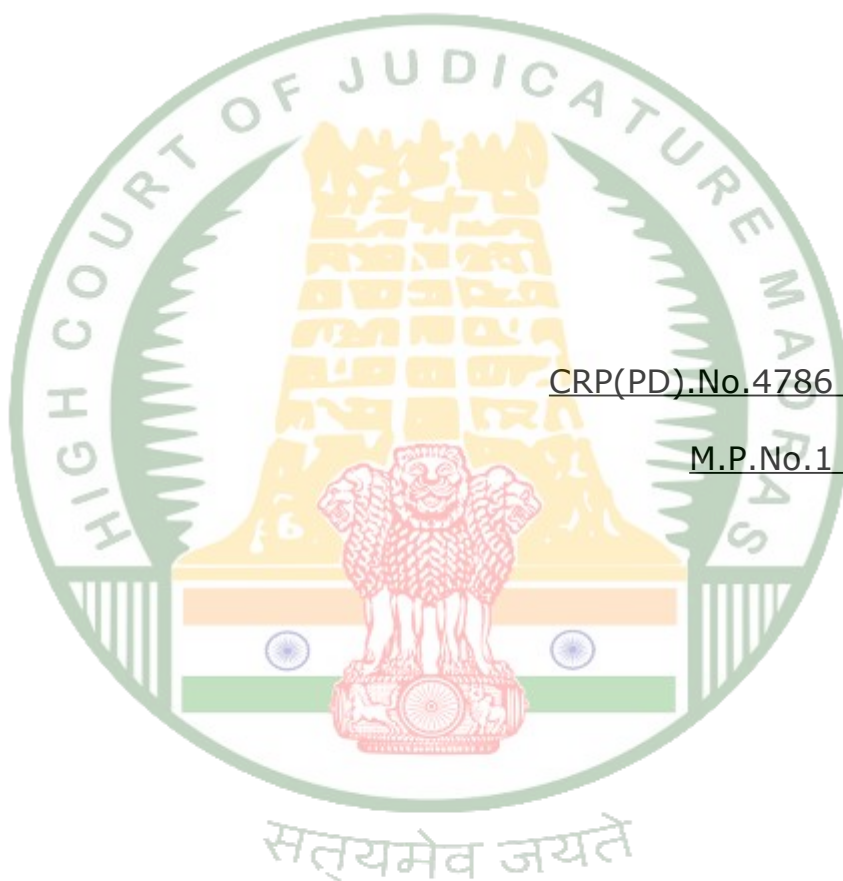
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Speaking Order:Yes/No

CRP(PD).No.4786 of 2013

RMT.TEEKAA RAMAN., J.

dua

To
The II Additional District Munsif,
Salem.



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