

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2019

CORAM

THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(PD)No. 955 of 2019

and

CMP.No.6276 of 2019

A.E. Gunasekaran

...Petitioner

Vs

Rejendran

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order dated 25.01.2019 in I.A.No.49 of 2017 in O.S.No.114 of 2014, on the file of the Principal District Munsif Court, Ambur and allow the Civil Revision Petition.

For Petitioner : Mr. R. Subramanian

ORDER

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The above Civil Revision Petition is filed challenging the order passed by the learned Principal District Munsif, Ambur in rejecting the request of the revision petitioner to scrap the earlier Commissioner's report and issue a fresh Commission.

2. The facts in brief are as follows: The revision petitioner/plaintiff has filed the suit for a bare injunction with reference to the following Schedule of Property:

Schedule of Property

Vellore District, Ambur Taluk Sub Registration District, Chinnavarigam village, old survey No.134/4A, new survey No.134/56, with an extend of 762 Square Meter plot with a house and its boundaries are

East of Jayaraman house in Survey No.134/55, West of Survey No.134/4B1, Anandan house, North of Ragunathapuram Main Road, and South of lane and Defendant property in between house on 762 Square Meter plot with house.

3. Pending the above suit, the plaintiff had filed I.A.No.49 of 2017, on the ground that while he tried to construct a compound wall on the northern side of his property, the defendant objected to it and trying to encroach into the land and was attempting to block the public lane/passage by putting compound wall and therefore sought for the appointment of an Advocate Commissioner to visit the suit property along with surveyor and to submit a report. The said application was ordered and the Commissioner was appointed and warrant was issued on 04.10.2017 to the Commissioner. The revision petitioner had issued a memo of instructions requiring the Advocate Commissioner to note down the following:

a) that the property should be measured as per the revenue records

- b) that the revenue records had been corrected
- c) that the plaintiff has to put in construction of a new compound wall.

4. Thereafter, additional instructions were issued by the revision petitioner stating that the Commissioner should measure the property as per the plan provided by the land surveyor, Land Administrative Department, Chepauk. The Advocate Commissioner has inspected the property with the assistance of surveyor and has provided a detailed report after measuring the property as per the records maintained by the Village Administrative Officer. The Commissioner has noted the construction and has also noted the fact that the revenue records have been corrected. Apart from that, the Commissioner has in great detail indicated how the lane has been encroached upon which is contrary to the defense taken by the revision petitioner in his written statement and has identified the various points and the extent to which the lane has been encroached upon.

5. The revision petitioner has filed a memo of objection inter alia contending that despite his instruction, the Commissioner had not measured the property as per the survey plan of the Central office at Chepauk and therefore he sought for the report to be

scrapped and a fresh warrant to be issued to a new Commissioner.

6. The learned Principal District Munsif, Ambur after considering the report and objection came to the conclusion that the issue with reference to the revenue records had to be collected and proved by the respective parties with their revenue records/ documents and the Commissioner cannot be used to collect the same.

7. Heard Mr.Subramanian, learned counsel for the revision petitioner who would contend that he only wanted the scrapping and fresh issue since his instruction to measure the lane as per the surveyor's plan has not been complied with and therefore the Commissioner's report and measurements are not accurate. He would further point out that there is a difference between the plan submitted by the survey and the plan submitted by the Central Survey office at Chepauk.

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8. Heard the learned counsel and perused the papers. The suit is for the bare injunction with reference to the suit schedule property.

9. The defendant has come forward with a defense that

between the suit property and the defendant's property, a common lane is in existence and it is in that lane the encroachment is being made. The Commissioner has measured the property and submitted a report. It is for the parties to prove their case through their documents of title and revenue records standing in their names and they cannot have a Commissioner to collect those records for them.

10. I find no infirmity in the order passed by the learned Principal District Munsif, Ambur. Accordingly, Civil Revision Petition stands dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

13.03.2019

Index: Yes/No
Internet: Yes/No
Speaking order / Non-speaking order

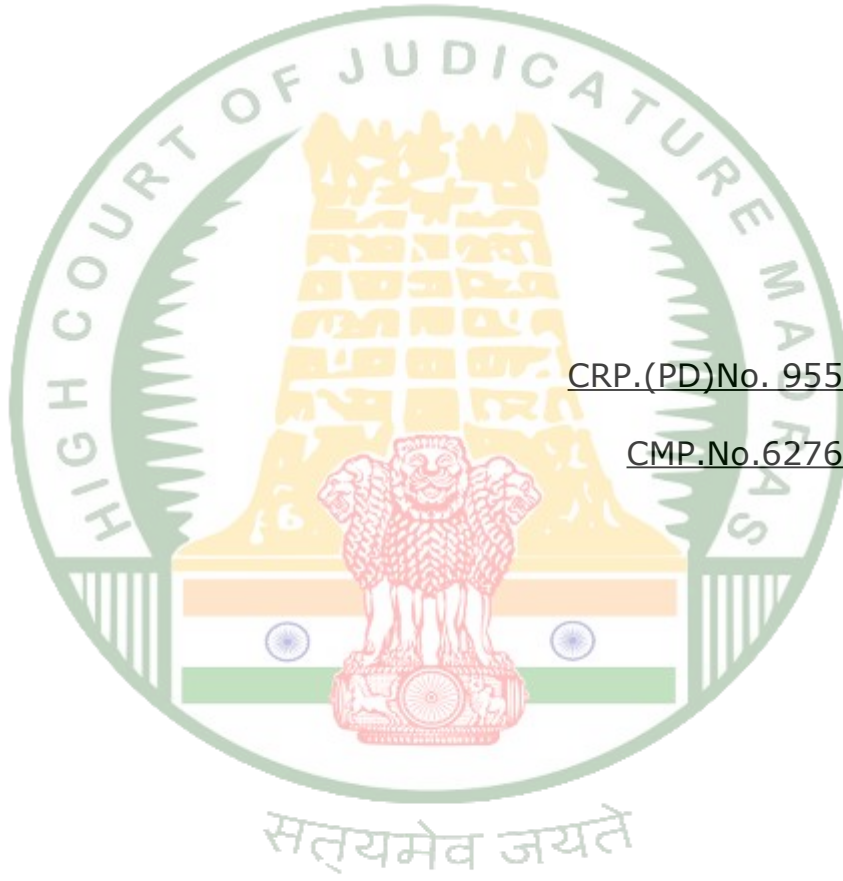
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To
The Principal District Munsif,
Ambur.

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P.T.ASHA, J.

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