

C.M.P.No.7380 of 2019

in

S.A.No.471 of 2012

N.SATHISHKUMAR, J.

This petition has been filed to appoint an Advocate Commissioner to visit and identify the suit property.

2.Heard the learned Counsel for the petitioners as well as the learned Counsel for the respondents.

3.During the arguments, it appears that the only dispute is regarding the identity of the suit property. The suit has been originally filed for declaration and consequential permanent injunction in respect of S.No.284/1A/1A13. The suit has been filed on the strength of the sale deed under which the said property has been purchased in the year 1961. However, at the time of such purchase, the survey number shown at S.No.284/A/1A whereas the suit has been filed in respect of S.No.284/1A/1A13.

4.It is the contention of the learned Counsel for the respondents/defendants that they are in possession of the property in S.No.284A/1A13 from time immemorial and they have also obtained

pattas for the said suit property and the same have also been produced before the trial Court which have been marked as Ex.B.2, Ex.B.7 & Ex.B.14 respectively. It is seen from the records that Ex.B.2 does not reflect the said sub division in the survey number whereas Ex.B.7 reflects the said sub division. Hence, the trial Court has decreed the suit whereas the first appellate Court has non-suited the petitioners/plaintiffs on the ground that there are discrepancies in the survey number and also in the identity of the property.

5.At this stage, the learned Senior Counsel has filed an application to appoint an advocate commissioner to identify the suit property with the help of the District Land Surveyor and with the help of original revenue records from the year 1961 - 1998. The above application was opposed by the respondents on the ground that a commissioner cannot be appointed to gather evidence and the petitioners/plaintiffs have not filed such an application either before the trial Court or before the first appellate Court.

6.I have perused the Judgments of the Courts below. It seems that the only dispute is with regard to the sub division in the survey number of the suit property and the identity of the property. The

title deed in favour of the plaintiffs indicates that they have purchased the property in S.No.284/A/1A. Now, it is the contention of the petitioners/plaintiffs that the suit property S.No. Is 284/1A/1A13 whereas it is the contention of the defendants that the said survey number belongs to them and they are in possession. However, from the exhibits filed in support of the contention of the defendants, it is seen that Ex.B.2 does not tally with Ex.B.7.

7. Therefore, in order to arrive at a conclusion with regard to the survey numbers, this Court is of the view that appointment of an advocate commissioner is very much required particularly to identify the suit property with the aid of a surveyor.

8. Hence, this Court appoints Mr.M.Rajasekhar, Enrollment No.433/1993 having office at No.193, Additional Law Chambers, High Court Buildings, Chennai - 104, Ph - 9444031305 as an advocate commissioner in this regard to identify the suit property with the help of a surveyor and with the help of original revenue records like A Register, FMB Sketch of the year 1961 till the date of filing of the suit.

9.The advocate commissioner shall be paid a sum of Rs.40,000/- by the petitioners/appellants apart from survey expenses and travelling expenses. The commissioner shall take aid of a surveyor of Kanchipuram District and identify the suit property in S.No.284/A/1A13. The District Surveyor of Kanchipuram District is hereby directed to nominate a surveyor in the rank of Taluk surveyor to carry out this object as requested by the advocate commissioner. The advocate commissioner shall also identify the suit property in terms of the title deeds of the parties.

10.Accordingly, this petition is disposed of in the above terms. Post the matter for filing report on 29.04.2019.

02.04.2019

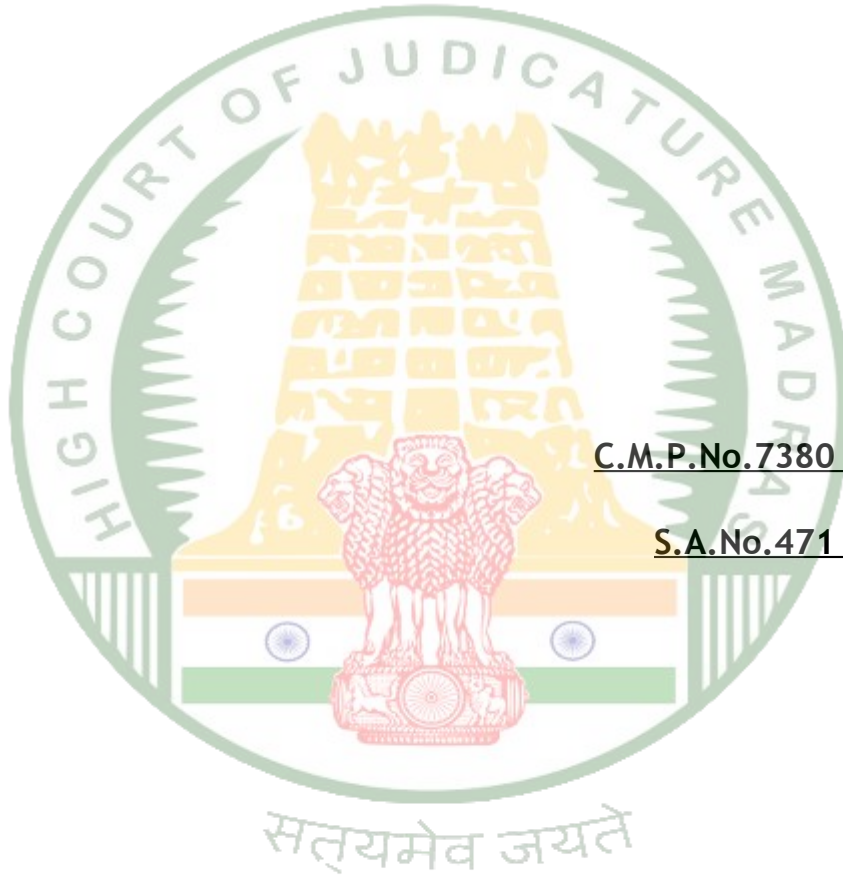
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Note: Registry is directed to forward the order copy to the District Surveyor, Kanchipuram District.

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N.SATHISHKUMAR, J.

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Dated:02.04.2019