

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2019

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(NPD)No.756 of 2016

and

CMP.No.4183 of 2016

Subramanian

... Petitioner

Vs.

Ramasamy @ Jaya Ramasamy

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and final order dated 25.01.2016 passed in I.A.No.55 of 2015 in A.S.No.5 of 2015 on the file of the Principal Sub Court, Erode District.

For Petitioner : Mr.I.C.Vasudevan

For Respondent : Mr.D.Gopal

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ORDER

The Civil Revision Petition has been filed to set aside the fair and final order dated 25.01.2016 passed in I.A.No.55 of 2015 in A.S.No.5 of 2015 on the file of the Principal Sub Court, Erode District.

2. In a suit for fixation of boundaries between the lands in R.S.No.216/4A and R.S.No.216/1 by appointing an Advocate Commissioner, the trial Court without appointing an Advocate Commissioner has straight away decreed the suit.

3. Perusal of the judgment shows that no title deeds were produced but the decree was based only on revenue records and final decree based on a compromise memo filed in a partition suit. The defendant filed an appeal and also filed an application for appointment of Advocate Commissioner. The Lower Appellate Court appointed an Advocate Commissioner to measure the property with a qualified surveyor and to file a detail report of its physical feature.

4. Challenging the said order of the Advocate Commissioner, the petitioner/plaintiff is before this Court.

5. Surprisingly, the very prayer in the plaint itself is for fixing the boundaries through an Advocate Commissioner with the help of the surveyor. However, the trial Court has not appointed any Commissioner and before the Lower Appellate Court the defendant has filed an application to appoint an Advocate Commissioner for identifying the boundaries but the same was objected to by the plaintiff. The Lower Appellate Court has allowed the application stating that the appointment

of an Advocate Commissioner is very much essential since the title is disputed by the defendant. When the suit itself for fixation of boundaries through a Advocate Commissioner with the assistance of a Surveyor, the Court should have considered the request and ought not to have refused the same.

6. Therefore, this Court does not find any infirmity in the order and the Lower Appellate Court has rightly allowed the application by appointing an Advocate Commissioner. The Civil Revision Petition has no merits for consideration and hence, stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.06.2019

bri

Index:Yes/No

Internet:Yes/No

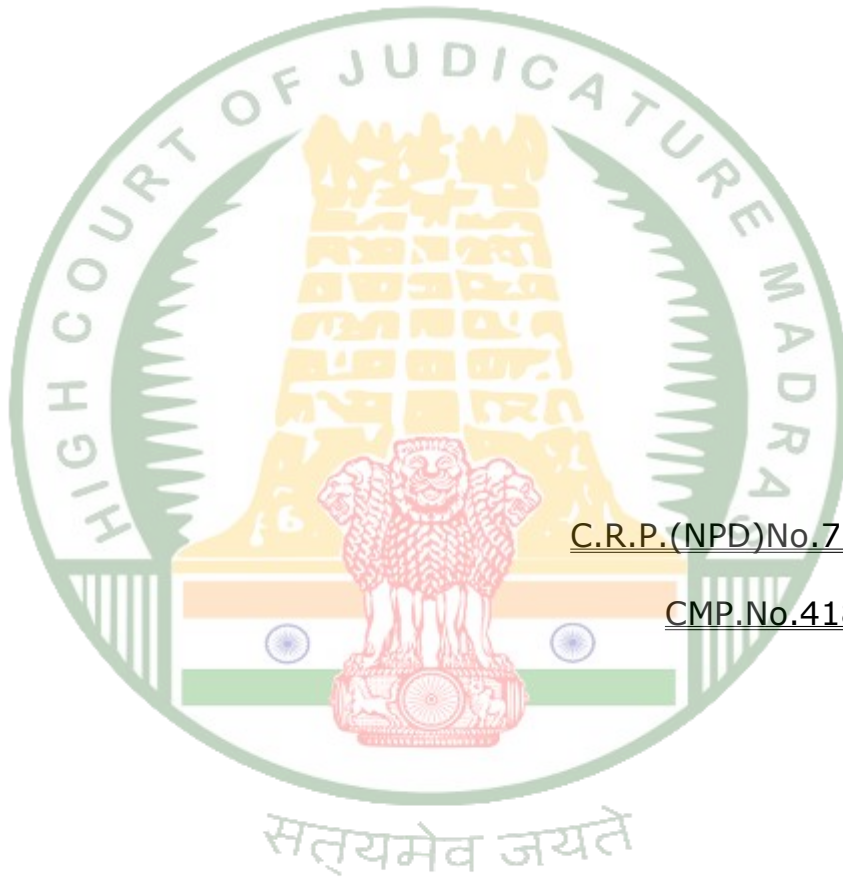
Speaking Order/Non Speaking Order

To

The Principal Sub Court,
Erode District.

M. GOVINDARAJ, J.

bri



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