

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM:

THE HONOURABLE **MR. JUSTICE C.SARAVANAN**

C.R.P(PD).No.1204 of 2014

and

M.P.No.1 of 2014

Chinnammal Petitioner

Vs.

Kannan ... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 11.11.2013 passed in I.A.No.704 of 2012 in O.S.No.224 of 2012 on the file of the District Munsif, Perambalur.

For Petitioner : Mr.T.M.Hariharan

For Respondent : Mr.D.Kanaga Sundaram
for Mr.T.N.Rajagopalan

ORDER

The petitioner is the plaintiff in O.S.No.224 of 2012 on the file of the District Munsif Court, Perambalur. The said suit was filed for the following reliefs:

a. for demarcation of the areas and extents of the suit proerty allotted to the plaintiff and to the first defendant as per the registered partition deed

dated 11.05.1967 on ground and

b. pass a decree for permanent injunction in favour of the plaintiff and against the first defendant restraining the first defendant his men and agents and servants and successors in interest from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

c. order and direct the first defendant to pay the plaintiff her cost of the suit.

2. In the said suit the respondent also filed the written statement. Thereafter, the petitioner filed I.A.No.704 of 2012 for appointment of an Advocate Commissioner to make physical inspection of the property and to demarcate the suit property and extents allotted to the petitioner as per the deed of partition referred to the suit.

3. The Court below dismissed the said application only on the ground that without challenging the Judgment and decree in A.S.No.27 of 2000 to demarcate the suit property in North South direction, is not maintainable.

4. Heard arguments of the learned counsel for the petitioner and the respondent, perused impugned order and documents on record.

5. Earlier the first respondent had filed original suit in O.S.No.374 of 1991. In the said suit the relief was sought for a declaration and for permanent injunction based on the partition deed dated 11.05.1967. The said suit was dismissed and therefore A.S.No.27 of 2000 was filed before the Principal District and Sessions Judge, Perambalur by the respondent/defendant herein and by an order dated 15.11.2011, the appeal suit was allowed to the following observations:

Therefore, this Court is of the view that the relief of declaration alone can be granted to the respondent/defendant and not the consequential injunction and it would be suffice to grant privilege to the appellant to approach the revenue authority to have mutation of revenue accounts based on the declaration granted by the Court

6. The learned counsel for the petitioner submits that by merely appointing an Advocate Commissioner to ascertain whether the properties pursuant to the partition deed dated 11.05.1967 are in the hands of the petitioner or in the hands of the respondent can be determined only if a report is given after local investigation and therefore no prejudice will be caused to the respondent.

7. The learned counsel for the respondent submitted that the issue which has already attained finality in A.S.No.27 of 2000 cannot be re-agitated by filing a fresh suit and in any event attempt of the petitioner to redraw the boundaries was impermissible.

8. Following the observation of the lower Court in para (9) of the impugned order has practically non-suited the petitioner at an interlocutory stage, without trial which in my view is impermissible:-

The said partition deed was challenged by the petitioner herein in the said O.S.No.374 of 1991 and in A.S.No.27 of 2000, but the said partition deed has been confirmed. So, in the above first appeal, the respondent by mentioning a specified measurement, has got declaration decree in the District Court, Perambalur in which the petitioner was also a party. That said first appellate Court decree was not challenged by this petitioner. Further though the petitioner denied the execution of the said partition deed in the said A.S.No.27 of 2002, the District Court, Perambalur has confirmed the partition deed and after that only the said declaratory decree has been given in favour of the respondent/first defendant. In such

circumstances, when the petitioner was also a party to the said proceedings, without challenging the said findings that property particulars in the said O.S.No.374 of 1991 and in A.S.No.27 of 2000 was given in East-West direction which is not correct and not similar with the partition deed and praying to demarcate the suit property in the North South Direction, is not maintainable

9. The Court could allowed the interlocutory application filed by the petitioner by appointing an Advocate Commissioner to give a report. Thereafter, it could have heard both parties and decided the case one way or the other.

10. I am of the view that appointment of an Advocate Commissioner to give a report so as to ultimately demarcate the boundaries as per the partition deed dated 11.05.1967 will in no way cause prejudice to the respondent.

11. On the other hand, it will be easy for the Court to come to a correct conclusion whether the petitioner/plaintiff was indeed entitled to the relief sought for in O.S.No.224 of 2012.

12. The Civil Revision Petition is ordered as follows:

i) The impugned orders passed in I.A.No.704 of 2012 in O.S.No.224 of 2012 on the file of the District Munsif, Perambalur is partly set aside with a direction to appoint an Advocate Commissioner to give a report within stipulated period.

(ii) The rights of the respondent to raise all objections to the report of the Advocate Commissioner is prescribed.

iii) The District Munsif, Perambalur is directed to dispose the suit in O.S.No.224 of 2012 within a period of six months from the date of receipt of this order.

13. The Civil Revision petition is allowed with the above directions.

No costs. Consequently, the connected Miscellaneous Petition is also closed.

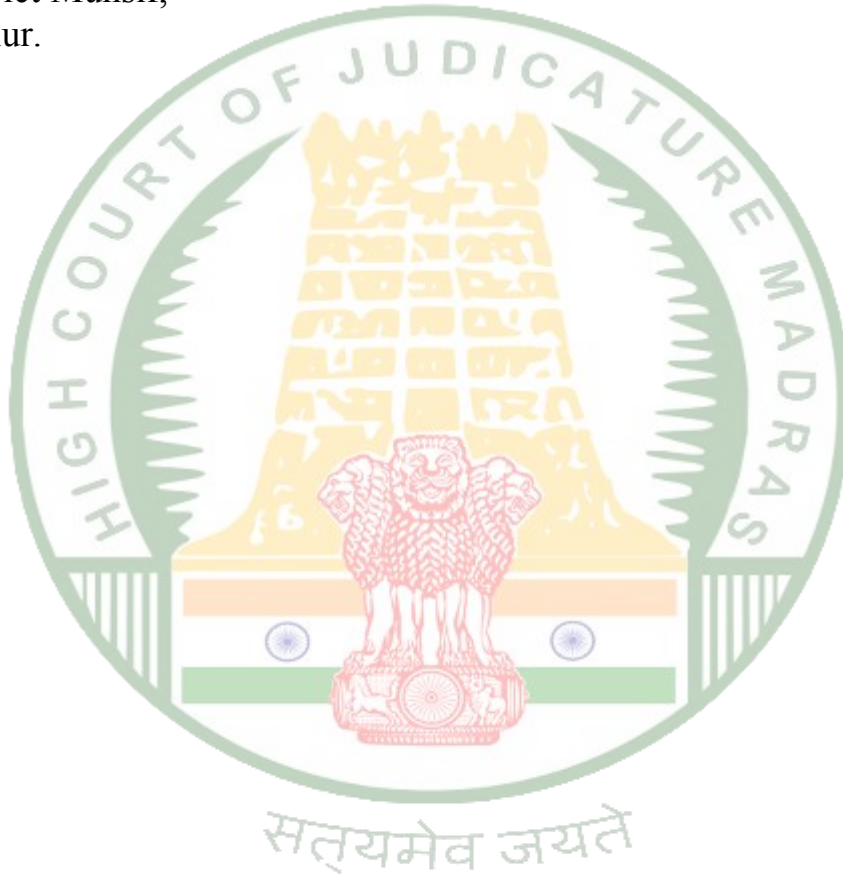
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To

The District Munsif,
Perambalur.



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C.SARAVANAN, J.

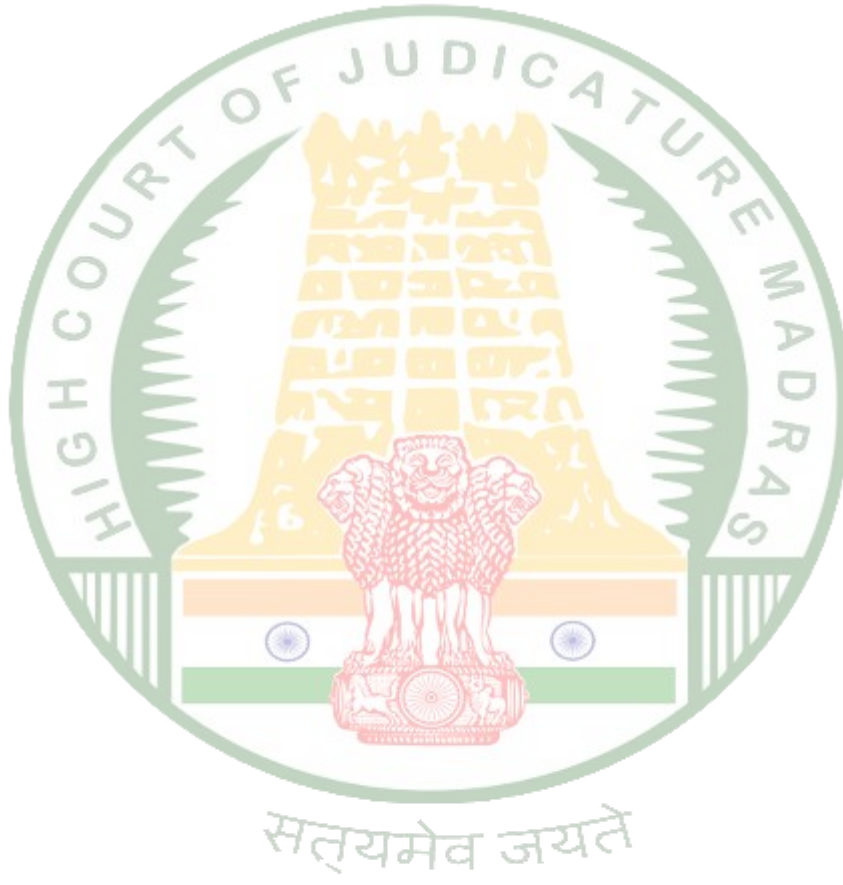
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