

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P (PD).No.2025 of 2014

1.Rangammal

2.P.Sugumar

3.P.Margabandhu

.. Petitioners/Plaintiffs

vs

P.Umapathi

.. Respondent/Defendant

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, setting aside Decree and Decretal order passed in I.A.No.1390 of 2013 in O.S.No.313 of 2009 dated 04.04.2014 on the file of Principal District Munsif, Vellore.

For Petitioners : Ms.R.T.Sundari

For Respondent : Mr.A.U.Ilango

ORDER

The present Civil Revision Petition is filed against the fair and decretal order passed in I.A.No.1390 of 2013 in O.S.No.313 of 2009 dated 04.04.2014 on the file of the Principal District Munsif Court,Vellore.

2. By the impugned order, the Court dismissed I.A.No.1390 of 2013 in O.S.No.313 of 2009 filed under Order 26 Rule 9 and Section 151 of CPC for appointment of an Advocate Commissioner.

3. The petitioners are the plaintiffs in O.S.No.313 of 2009 before the Principal District Munsif Court, Vellore. After the written statement was filed, the petitioners/plaintiffs filed I.A.No.1390 of 2013 under Order 26 Rule 9 and Section 151 of C.P.C., for appointment of an Advocate Commissioner to give a report with the help of a Surveyor.

4. The said application was contested by the respondent/defendant. The Court after examining the records, came to a conclusion that the application is belated and therefore, it cannot be allowed and the lower Court dismissed the application.

5. The operative portion of the impugned order reads as under:

'But the respondent/plaintiff in this counter affidavit it is mentioned that, 'D' Schedule Property in Survey No.135/1A as 35 cent is false and it is actually 50 cent, further 'C' Schedule Property belongs to this respondent/plaintiff and one part of this property is Schedule 'C' Property.

Since, there is no dispute between the two parties regarding the extent of the property and the measurement

of the property, there is no need to survey the property.'

6. However, in the written statement, the respondent has stated as follows:

“ As the plaintiffs have come forward with the suit, it is for them to take out a commission to prove their case. In fact, the plaintiffs brought a surveyor and measured the land before filing the suit. After measurement, the surveyor himself found that the trees are all situate only in the defendant's land and not over the alleged common ridge.”

7. The learned counsel for the respondent/defendant relied upon the decision of the Karnataka High Court in the case of ***B.S.Nazir Hassan Khan Vs Aswathanarayana Rao and Others*** reported in AIR 2004 Karnataka 92.

8. Heard the learned counsel for the petitioners and the respondent.

9. The only issue that arises for consideration in the suit was whether the petitioners/plaintiffs were entitled to the relief based on the pleadings for mandatory injunction to direct the respondent/defendant to remove all coconut trees standing in 'C' Schedule Property cultivated in part of 'B' Schedule Property on the ridge.

10. This aspect can be decided by the Court only based on a report to

be given by an Advocate Commissioner with the help of surveyor. Therefore rejection of the prayer will not further the quest for justice.

11. I am of the view that to meet the ends of justice, application for appointment of the Advocate Commissioner should be allowed. Merely because an Advocate Commissioner is to give a report, does not mean that the case of the petitioners/plaintiffs stand will be proved. It is only a piece of evidence. Content of the report can be tested. It will be subject to proof and relevancy.

12. Considering the fact that the suit is of the year 2009 and the application was filed only in the year 2013 at the fag end just before the case was to be taken for after trial, I deem it fit that to ends of justice it will be also fair, to direct the petitioners to pay a sum of Rs.3,000/- as cost to the respondent.

13. Accordingly the Civil Revision Petition is allowed with the following directions:

i) The impugned order passed in I.A.No.1390 of 2013 in O.S.No.313 of 2009 dated 04.04.2014 on the file of Principal District Munsif Court at Vellore is hereby set aside;

ii) The petitioners/plaintiffs are directed to deposit a

sum of Rs.3,000/- to the credit of the above suit within a period of four weeks from the date of receipt of a copy of this order.

iii) On such deposit, the respondent/defendant will be entitled to withdraw the same from the suit account.

iv) Thereafter, the Court shall appoint an Advocate Commissioner who shall be directed to give a report within a period of thirty days thereafter. Expenses in connection with will have to be borne by the petitioners/plaintiffs.

v) The Principal District Munsif Court, Vellore shall endeavour to dispose O.S.No.313 of 2009 within a period of nine months from the date of receipt of a copy of this order.
No costs.

30.04.2019

Index: Yes/ No

Internet : Yes/No
arb/jen

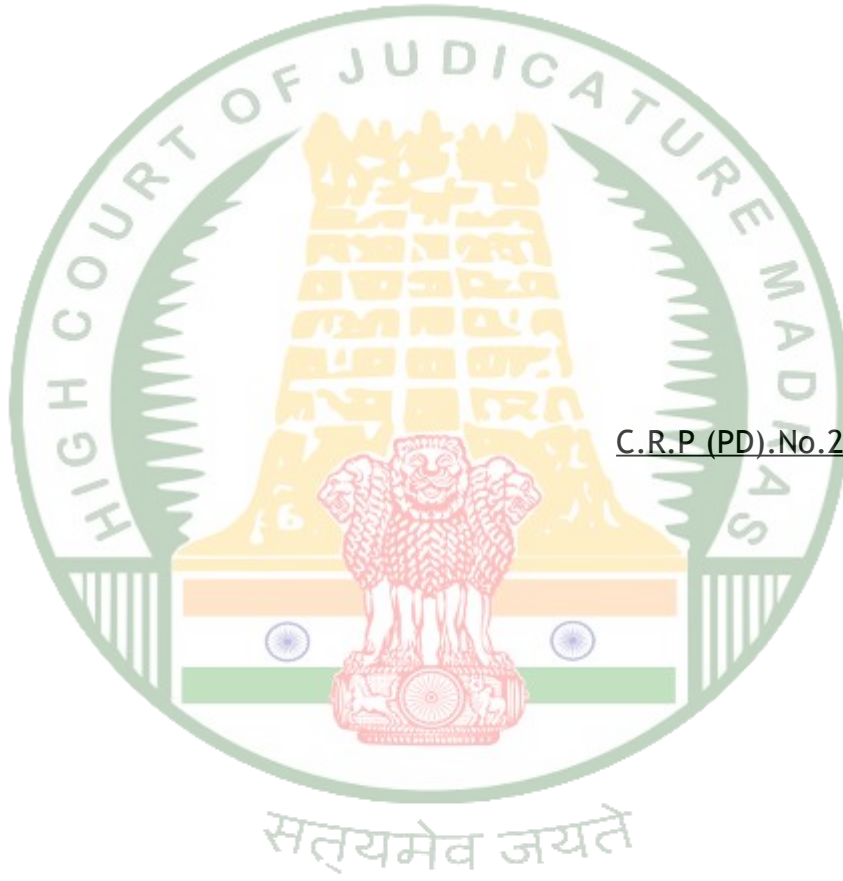
To

1.Principal District Munsif Court,
Vellore.

2.The Section Officer,
V.R. Section, High Court, Madras.

C.SARAVANAN,J.

Jen/arb



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