

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	18.03.2019
Pronounced On	19.03.2019

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

C.R.P.(PD).No.2306 of 2014
and
M.P.No.1 of 2014

Kumari ... Petitioner

Vs.

Venkatesan ... Respondent

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 26.02.2014 passed in I.A.No.1146 of 2009 in O.S.No.295 of 2009 on the file of District Munsif Court, Panruti.

For Petitioner : Mr.A.Nilaphar for M/s.R.Meenal

For Respondent : Mr.V.Lakshmi Narayanan

ORDER

The present Civil Revision Petition has been filed against the fair and decretal order dated 26.02.2014 passed in I.A.No.1146 of

2009 in O.S.No.295 of 2009 on the file of District Munsif Court, Panruti.

2.By the said order the court below has appointed an Advocate Commissioner to inspect and give a report in respect of the following property:-

"Cuddalore Reg.Dt Panruti sub Reg.Dt at Ezhumedu Village Dry R.S.No.137/5 out of 0.70.0 Hectare an extent of 0.25.0 Hec and Dry R.S.No.137/6 0.18.0 Hectare Totaling of 0.43.0 Hectare Old No.16/5 1.06 Acre. Boundaries : West of Bangaru Reddiar's lands, East of Veerappa chettiar, North of Channel, South of Narayana Vagaira lands. Kist for Survey No.137/5 Rs.3.88 Kist for Survey No.137/6 Rs.1.00 Total Kist Rs.4.88."

3.It is the case of the petitioner that earlier the petitioner had filed O.S.No.161 of 2007 before the District Munsif Court, Panruti between the parties herein. An application was filed in I.A.No.68 of 2008 to appoint an Advocate Commissioner to measure the suit property. The said application was allowed after contest.

4.It is submitted that pursuant to the order in I.A.No.68 of 2008 in O.S.No.161 of 2007, the Advocate Commissioner has also filed a report before the District Munsif Court, Panruti. The learned counsel for the petitioner submits that the respondent suppressed the filing of the above suit and filed the suit in O.S.No.295 of 2009. In the said suit the respondent prayed for appointment of an Advocate Commissioner. The learned counsel further submitted that the respondent had opposed the appointment of Advocate Commissioner in O.S.No.161 of 2007 as unnecessary. Therefore, cannot ask for appointment of Advocate Commissioner in a subsequent suit between then.

5.The learned counsel also submitted that the intention of appointing the Advocate Commissioner under Order 26 Rule 9 of CPC is not for collecting evidence. The learned counsel submitted the survey in O.S.No.161 of 2007 and survey referred in the subsequent suit vide in O.S.No.265 of 2009 are one of the same and therefore, the lower Court erred in allowing the application to appointing the Advocate Commissioner.

6.Per contra, the learned counsel for the respondent submitted that under Order 26 Rule 10 (2) of C.P.C stipulate that

the Advocate Commissioner's Report is confined only to the suit in which the report is given, in view of the specific language in Order 26 Rule 10 of C.P.C. Further the learned counsel submitted that survey in the subsequent suit relates to lands in Survey No.137/6 and partly in Survey No.137/5 and is confined to 0.25.0 Hectare whereas R.S.No.137/5 covers the larger extent of land.

7.It is noticed that on an earlier occasion in O.S.No.161 of 2007, an advocate commissioner was appointed , who has also since given a report on 21.10.2009 wherein it has been stated that the new survey No.137/5 consisted of Old survey No.12/3, 16/1, 16/3, 16/5. He has also stated that old survey No.16/5 consisted of 1.06 acre but 61.5 cents was not traceable in the new Survey No.137/5 and that the affected party should take appropriate steps.

8.In O.S.No.295 of 2009 relief is in respect of in lands in Dry R.S.No.137/5 to an extent of 0.25.0 Hectare out of 0.70.0 Hectare and in respect of land in Dry R.S.No.137/6 to an extend of 0.18.0 Hectare. Totaling 0.43.0 Hectare. Thus, the portion of the land which was originally part of whole survey 16/5 has to be ascertained.

9. There is no harm if an Advocate Commissioner is appropriated to give a report in O.S.No.295 of 2009 and no prejudice will be case to the petitioner. After all the report of Advocate Commissioner is only a piece of evidence to assist the court to come to a correct conclusion and parties are entitled to raise their objections to the report.

10. Consequently, I find no merits in the present Civil Revision Petition. The two suits are of the years 2007 and 2009 respectively. The District Munsif is therefore directed to dispose both the suits within nine months from the date of receipt of copy of this order.

11. Therefore, the present Civil Revision Petition is dismissed with above observations. No costs. Consequently, connected Miscellaneous Petition is also closed.

Index :Yes/No
Internet :Yes/No

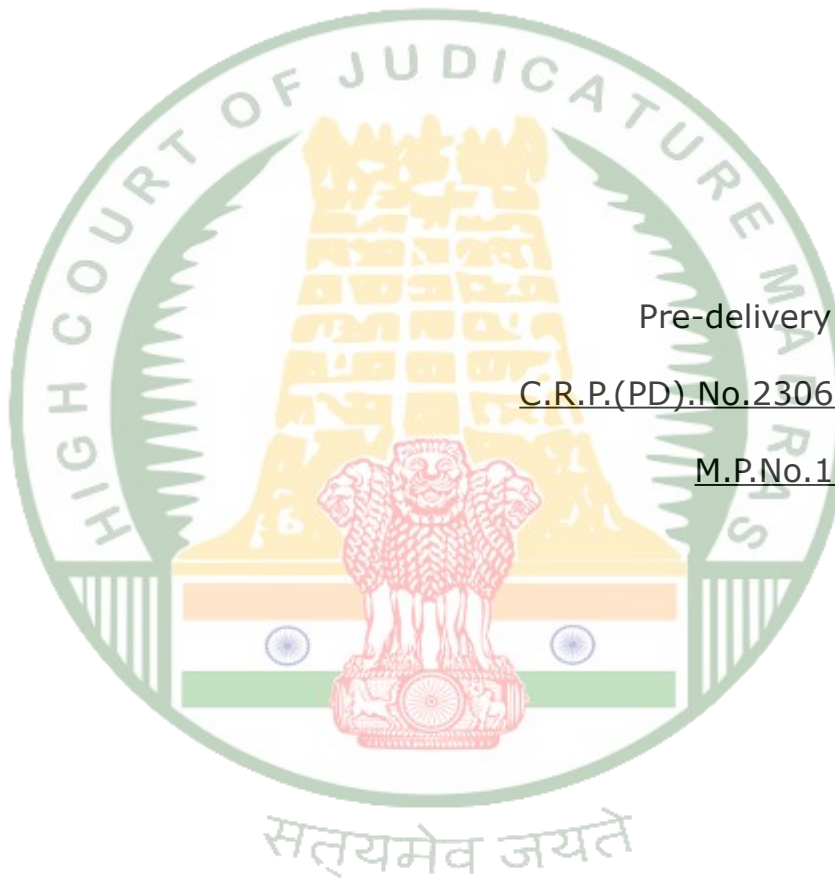
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1. The District Munsif Court, Panruti.

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

C.SARAVANAN, J.

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Pre-delivery order in

C.R.P.(PD).No.2306 of 2014
and
M.P.No.1 of 2014

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