

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2019

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD)No.2337 of 2019

and

CMP.No.15240 of 2019

Manickam

... Petitioner

Vs.

1.Natarajan

2.Malliga

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal order dated 01.07.2019 passed by the learned District Munsif at Mettur, Salem district allowing the interim application I.A.No.371 of 2018 in I.A.No.307 of 2010 in O.S.No.103 of 2006 pending on the file of the learned District Munsif at Mettur.

For Petitioner

: Mr.A.Chandra

ORDER

Aggrieved over the appointment of a new Commissioner, the petitioner/plaintiff is before this Court.

2. According to the plaintiff, even though he filed a petition for appointment of Advocate Commissioner in the year 2010 because of the dilatory tactics adopted by the defendant, the warrant could not be executed by several Commissioners appointed successively by the Court. At last, the last Commissioner appointed in July 2017 completed the task, but the defendant found fault with the Commissioner's report and sought for appointment of a new Commissioner. The trial Court by order dated 01.07.2019 appointed a new Commissioner and directed him to submit a report on or before 24.07.2019.

3. Per contra, the learned counsel for the respondent would contend that the suit property itself is measuring around 5 cents and the plaintiff alleges encroachment of 440 sq.ft by the defendants in his pleadings. Whereas the Commissioner went on to Survey the entire property belonging to the plaintiff to the extent of 9198 sq.ft., and could not pin point the encroachment with respect to the suit property and during the cross examination also the Commissioner was unable to explain the same. Therefore, he sought for appointment of new Commissioner and the trial Court has rightly appointed the Advocate Commissioner.

4. Heard both sides.

5. Considering the materials available before this Court, it could be inferred that A schedule property described in the plaint measures an extent of 5 cents and B schedule property which is said to be encroached by the defendant is only 440 sq.ft [4 x 10]. But the Advocate Commissioner, without confirming himself to the task assigned to him in the warrant with respect to the suit property, exceeded his limits and unnecessarily measured the entire extent of properties belonging to the plaintiff. In such circumstances, the trial Court has found that the said Commissioner report cannot be accepted and in the interests of justice appointed a new Commissioner to execute the specified task assigned to him on or before 24.07.2019.

6. In the considered opinion of this Court, the appointment of new Advocate Commissioner does not affect both sides. In fact the trial Court has rightly fixed the time limit for submission of report on or before 24.07.2019, considering the long pendency. Hence, the order passed by the trial Court does not suffer any infirmity and accordingly it is confirmed.

7. Considering the pendency of the case from the year 2006, a direction is issued to the trial Court to complete the trial within a period of six months from the date of receipt of the Commissioner report.

8. The Civil Revision Petition is dismissed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

19.07.2019

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Index:Yes/No
Internet:Yes/No
Speaking Order/Non Speaking Order

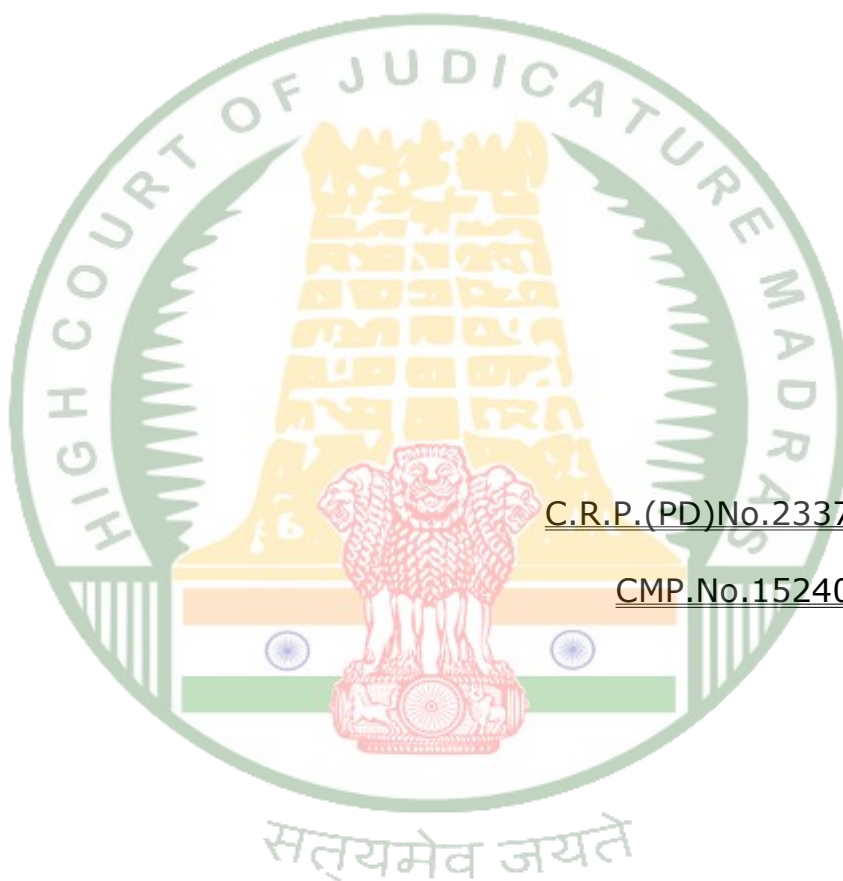
To

The District Munsif,
Mettur, Salem district.

NOTE: Issue order copy on 29.07.2019

M. GOVINDARAJ, J.

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