

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) Nos.2995 and 2997 of 2019
and
C.M.P.No.19331 of 2019

Valliammal

... Petitioner
in both C.R.Ps

Vs.

K.Rangasamy

... Respondent
in both C.R.Ps

Common Prayer: Petitions filed under Article 227 of the Constitution of India, to set aside the petition and order dated 07.08.2019 made in I.A.Nos.1 and 2 of 2019 in I.A.No.781 of 2018 in O.S.No.402 of 2013 on the file of the learned First Additional District Munsif Court, Erode.

For Petitioner

: Mr.N.Manoharan
in both C.R.Ps

COMMON ORDER

These Civil Revision Petitions have been filed against the fair and decretal order passed in I.A.Nos.1 and 2 of 2019 in I.A.No.781 of 2018 in O.S.No.402 of 2013, respectively on the file of the 1st Additional District Munsif Court, Erode by order dated 07.08.2019.

2.The Revision petitioner is the defendant before the trial Court in O.S.No.402 of 2013, which was filed for the relief of Mandatory injunction directing the defendant to remove the superstructure constructed in the B Schedule property of the plaint within a time to be stipulated failing which the Court itself may direct to do the same by appointing an officer of the Court. Pending suit, an Advocate Commissioner was appointed who has also filed her report along with a plan. Seeking to scrap the report and plan submitted by the Advocate Commissioner, the petitioner has filed I.A. Nos.1 and 2 of 2019 and to appoint new Advocate Commissioner with a direction to fix the boundaries between the properties with the assistance of the surveyor and file a report.

3. After hearing both sides, the trial Court passed the following common order.

“ In the result, this petition is dismissed with the following directions to the earlier advocate commissioner, the advocate commissioner has to give prior notice to both parties and their counsels, measure the suit property and the property of the defendant by fixing the boundaries of both properties with the aid of a qualified surveyor in the supervision of the District Surveyor and fix the boundary line in between the above properties, find out encroachment if any without reference to the earlier plan and report and file her additional report and scale plan. The advocate commissioner is hereby directed to complete the above exercise within a period of one month from today. Her additional remuneration is fixed as Rs.6000/- to be paid by the defendant in the suit. Both sides

are entitled to give memo of instructions and documents to the advocate commissioner. The prosperity and the correctness of the reports will be decided after examination of the advocate commissioner in I.A.No.781 of 2018 and after conclusion of trial at the final stage of the suit.”

4. Aggrieved over the said order, the present Civil Revision Petitions have been filed.

5. Mr. N. Manoharan, learned counsel for the petitioner would submit that, the very same Advocate Commissioner has already filed a report and plan after measuring the property without giving proper notice. The Advocate Commissioner also filed her report much after the time limit prescribed in the warrant. The mere conduct of the Advocate Commissioner as expressed by the revision petitioner before the Courts below in the earlier occasion would make it clear that the very same Advocate Commissioner would not do the work properly and file a report. However, the learned trial Judge has again issued warrant to the same Commissioner to measure the property and also to report the encroachment if any with plan.

6.The learned counsel for the petitioner would also submit that, though the lower Court accepted the earlier report, however, appointed the same Advocate Commissioner to re-visit the property which is unjustifiable. The learned counsel for the petitioner would further submit that the same Advocate Commissioner would do the same mistake this time also thereby the very right of the petitioner will be prejudiced, instead some other Advocate Commissioner may be entrusted the job. When the petitioner wanted to appoint a fresh Advocate Commissioner, the Court can choose any Advocate except the person whose conduct in the earlier occasion has been objectionable.

7.The learned counsel for the petitioner would also submit that, in the present impugned order, the learned Judge has not fixed any time within which the Advocate Commissioner has to complete the task and file a report and thereby the provisions under Order 26 Rule 18B has been violated. Therefore, on that ground the impugned order has to be set aside.

8. I have heard the learned counsel for the petitioner. Though notice had been served on the respondent and his name and address is printed in the cause list, none appears on his behalf.

9. I have gone through the materials very particularly the impugned order.

10. That the reason for the petitioner to file the said applications before the Courts below is that the report filed by the Advocate Commissioner appointed by the Courts below is defective and therefore, a new Advocate Commissioner has to be accepted. The trial Court, having accepted the said plea of the petitioner, appointed very same Advocate, thereby the second part of the prayer sought in the second application of the petitioner has been rejected.

11. In this context, I have gone through the orders passed by the Courts below. The learned Judge clearly given a direction to the Advocate Commissioner to give prior notice to both the parties and their counsel and thereafter measure the suit properties as well as the property of the defendant by fixing the boundaries with the help of the qualified Surveyor and fix the boundary line and also find out encroachment if any without reference to the earlier plan as well as the report filed by the Advocate Commissioner and file her additional report and scale plan. If these conditions imposed by the Courts below are strictly adhered to while filing the report by the Advocate Commissioner, this Court feel that the parties

may not have any grievance. At the same time, this Court finds that the learned Judge given a direction to the Advocate Commissioner to file a fresh report as an additional report, that means in addition to the earlier report already filed by the very same Advocate Commissioner. The learned Judge wants a fresh report by way of additional report and therefore if additional report is filed this time, the Court may accept both the reports.

12. This Court feels that in the said order a direction for appointing the very same Advocate as Commissioner was given by the learned Judge which is not justifiable because a clear objection has been made by the petitioner against the very conduct of the Advocate Commissioner. Be that as it may, once an application is filed by the petitioner to scrap the earlier report filed by the Advocate Commissioner, it would not be proper to direct the same Advocate Commissioner to file a fresh report only as an additional report. Therefore, this Court feel that fresh report to be filed by the Advocate Commissioner pursuant to the order of the trial Court in the impugned order shall be full pledged one and shall be relied upon and subject to the consent of the parties the earlier report need not be taken into account.

13. Though the learned counsel for the petitioner pointed out Order 26 Rule 18B CPC was violated in the earlier occasion, now the same has been rectified by the learned Judge and one month time has been fixed for submission of report. Since the earlier report filed by the Advocate Commissioner and plan shall not be taken into account, regarding any other grievance of the petitioner, this Court is of the view that, in view of the above said observation and modification, the impugned order need not be interfered. Accordingly, these Civil Revision Petitions are disposed of with the above observation and modifications. No costs. Consequently, connected miscellaneous petition is closed.

25.09.2019

Index: Yes / No
Speaking / Non speaking order
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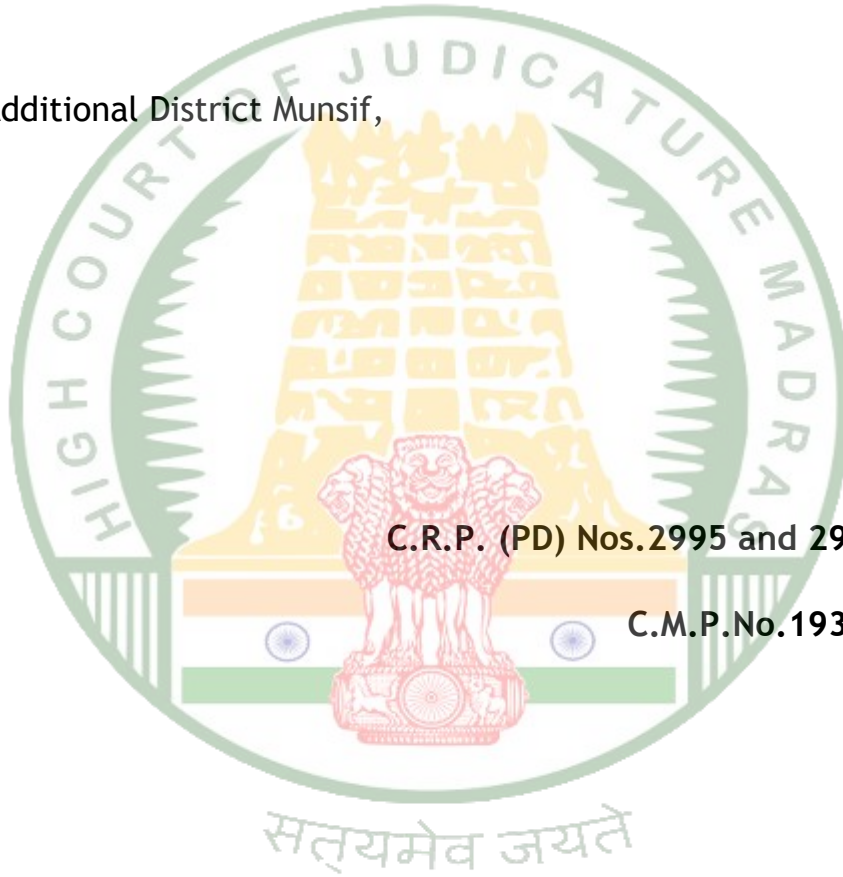
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R.SURESH KUMAR, J.

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To

The First Additional District Munsif,
Erode.



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