

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04..12..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.3393 of 2019
and
C.M.P.No.22252 of 2019

Saraswathi

... Petitioner

-Versus-

Kanthiah

... Respondent

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 26.02.2018 made in I.A.No.139 of 2017 in I.A.No.316 of 2015 in O.S.NO.468 of 2011 on the file of the learned Additional District Munsif, Namakkal, Namakkal District.

For Petitioner : Mr.A.Tamilvanan

ORDER

This revision petition has been filed as against the order of the learned Additional District Munsif, Namakkal, Namakkal District, refusing to order for re-issuance of Warrant of Commission to the very same Advocate Commissioner to inspect the physical features and to resurvey the suit property with the assistance of the Taluk Surveyor and submit a report and plan to scale.

2. The petitioner is the sole defendant in the suit. The respondent filed the above said suit for a decree for declaration declaring that 'AB' wall absolutely belongs to him and consequently interdicting the defendant and her men from in any way interfering with 'AB' wall and the vacant land adjacent to it on the southern side coming within natham land comprised in S.No.391/7; and for a mandatory injunction directing the defendant to remove the bathroom constructed in Natha land in S.No.391/7 measuring about 9 feet in length and 6 feet wide. Pending suit, at the instance of the plaintiff, the learned Additional District Munsif had appointed an Advocate Commissioner to measure the disputed property with the help of a Taluk Surveyor and file a report. The Advocate Commissioner had accordingly inspected the property in question and submitted his

report with plan. Not being satisfied with the report of the Advocate Commissioner, the defendant filed her objection which was taken on file by the trial court. While things stood thus, after the evidence of the defendant was closed, the defendant came out with an application for re-issuance of warrant of commission alleging that at the time of inspection and measurement, there was a difference noticed over measurement between 'G' and 'F' line. The defendant claimed that the measurement was not done properly. However, the learned Additional District Munsif dismissed that application holding that the application came to be filed after closing the evidence on the side of the defendant and when the suit was posted for arguments. That apart, the learned Judge has also given a finding that the application was filed belatedly with a only view to drag on the proceedings. It is this order which is now under challenge in this revision petition.

3. This civil revision petition is coming up today for admission. I have heard the learned counsel for the petitioner and also perused the records carefully.

4. As per the warrant of commission issued earlier pursuant to the order passed on the application filed by the respondent, the Advocate Commissioner had inspected the property in question, measured the same with the assistance of the Taluk Survey concerned and submitted a report along with a rough plan. After the filing of the report by the Advocate Commissioner, when the petitioner had come across a difference over measurement in respect of 'G' and 'F' line, the petitioner filed her objection which has, in fact, been taken on file by the court below. While so, after evidence had been closed and suit was posted for argument on 03.02.2017, the petitioner came out with an application for re-issuance of warrant of commission on the ground that he had noticed certain difference over measurement. On considering the facts and circumstances of the case, the trial court has dismissed the application on the ground that the application came to be filed belatedly only with a view to drag on the proceedings. In fact, the petitioner had already submitted her objection to the Advocate Commissioner's report and if the court below finds justification in the objection raised by the petitioner, it would take into consideration the same at the time of judgement. On going through the impugned order, this court does not find any irregularity or illegality in the same warranting to order for re-issuance of warrant of commission. Thus, the revision petition fails and the same is only liable to be dismissed.

In the result, this civil revision petition is dismissed and the order and decretal order of the court below impugned in this revision petition are hereby confirmed. No costs. Consequently, connected CMP is closed.

-s/d-
Assistant Registrar

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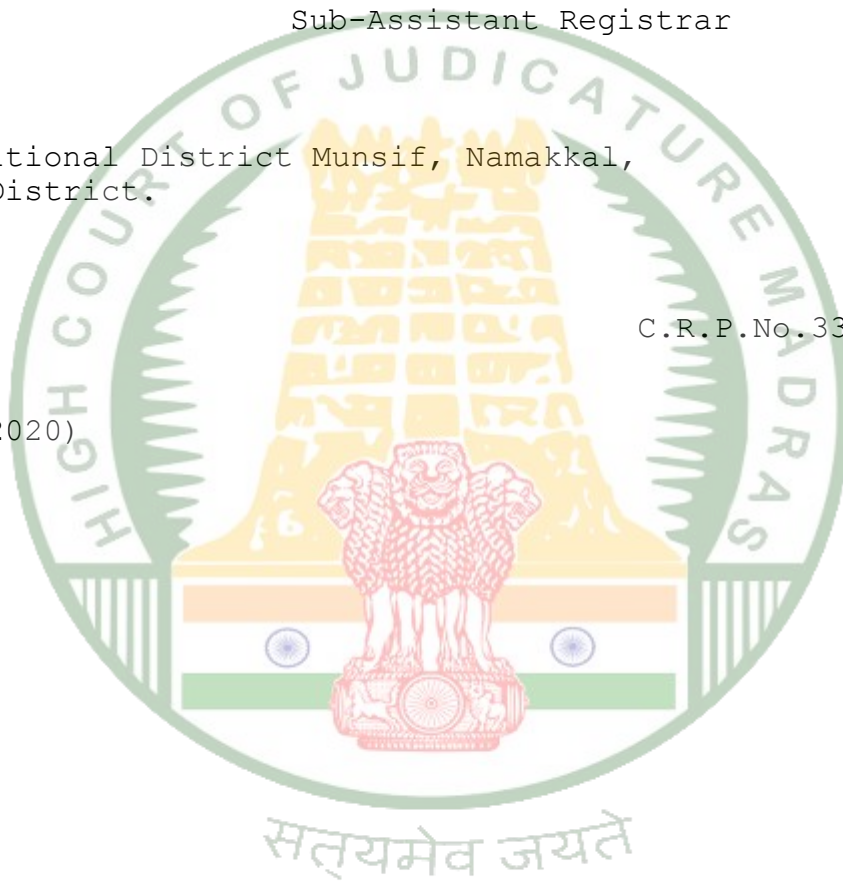
Sub-Assistant Registrar

kmk
To

1.The Additional District Munsif, Namakkal,
Namakkal District.

C.R.P.No.3393 of 2019

MP (CO)
SP (28/02/2020)



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