

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(P.D).No.36 of 2017

and

C.M.P.No.633 of 2017

R.Ramesh

... Petitioner

-VS-

Mrs.Sundari

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 03.11.2016 passed in I.A.No.550 of 2015 in O.S.No.76 of 2012 on the file of the Sub-Ordinate Judge, Poonamallee.

For Petitioner : Mr.K.Balamurali

For Respondent : Mr.M.Sriram

ORDER

The Civil Revision Petition is filed challenging the order of dismissal passed by the learned Sub-ordinate Judge, Poonamallee in I.A.No.550 of 2015 in O.S.No.76 of 2012. The said interlocutory application has been filed for re-issuing the warrant to the same Advocate Commissioner or to appoint any other

Advocate Commissioner to identify the Northern Boundary of the land in survey No.260/1A1 and to identify the suit A & B schedule properties with the help of the Taluk surveyor and to submit his report with sketch.

2.The parties are referred to in the same array as in the plaint. The plaintiff has filed the suit in O.S.No.76 of 2012 for a direction to the defendant to deliver the possession of the 'B' schedule property which is part of the 'A' schedule property after removing the encroachment made by the defendant in the suit property. The plaintiff had taken out the application in I.A.No.170 of 2012 for the following relief's:

"...to appoint an advocate commissioner to measure the land in schedule "A" property and to identify schedule "B" property while considering the total extent of land in plot No.12,11,9 & 10 as per the original Lay-out plan filed along with the plaint, with the help of area surveyor and to note down the physical features of the suit schedule property and to file his report along with sketch"

3.After due enquiry of the said interlocutory application, the learned Sub-ordinate judge was also pleased to appoint an advocate commissioner and the warrant issued to the commissioner would

read as follows:

"Whereas it is decided to require for the purpose of this suit that a Commissioner be appointed to measure the property of the petitioner/ plaintiff and the respondent /defendant by referring to the title document in their favour with the Assistance of Taluk Surveyor and to file his report with sketch along with the report of Taluk Surveyor."

4. Pursuant to the warrant, it is also seen that the Advocate Commissioner has inspected the property along with the Taluk Surveyor and a detailed report along with the Lay-out sketches, FMB, Adangal, patta, etc., has been filed by the Advocate Commissioner along with the report of the Taluk Surveyor. From the plan and report, which has been filed, it is seen that the commissioner has stated that the plaintiff's property falls short by about 6.6 feet and 7 inches on the eastern side. The advocate commissioner's plan also shows a shaded portion marked as A, D, E and H which appears to be the encroachment. After the filing of this report, the impugned application has been taken out by the plaintiff. The same has been dismissed by the learned Sub-ordinate Judge on the ground that the advocate commissioner has completed the task entrusted to him and the attempt of the plaintiff appears to be to collect the evidence for his case and therefore, the application was dismissed. Challenging this order the revision petitioner is

before this Court.

5. Heard, Mr.M.Balamurali, learned counsel appearing for the petitioner who would contend that the advocate commissioner has not fixed surveys stones from where the measurements have to be taken and this error has resulted in wrong calculations. However, the learned counsel relied upon the report of the advocate commissioner that on the eastern side, the plaintiff's property is short by 6 feet 7 inches.

6. Mr.Sairam, learned counsel appearing for the respondents would oppose the arguments by contending that the commissioner has completed his task and also submitted the detailed plan and report and there is no necessity to reissue a warrant since all the necessary details had been given by the advocate commissioner in his earlier report.

7. Heard the learned counsel appearing on either side and perused the papers.

8. From a reading of the reports of the advocate commissioner as well as Taluk Surveyor and a perusal of the plan filed by them, it is clear that the measurements have been taken as per the lay-out

plan and the report clearly states and in so far as the Plot Nos.9,10 and 11 are concerned, it was as per the measurements given in the lay-out sketch and only Plot No.12 (The plaintiffs property) which was short in the eastern side property with 6.6 feet and 7 inches. Further the plaintiff wants to find out where the encroachment is and he cannot use the advocate commissioner to the collect evidence.

8.In the result, I find no infirmity in the order passed by the learned Sub-ordinate Judge, Poonamallee in I.A.No.550 of 2015 in O.S.No. 76 of 2012. Accordingly, the Civil Revision Petition stands dismissed. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

19.02.2019

jrs/arb

Index : Yes/No

Internet : Yes/No

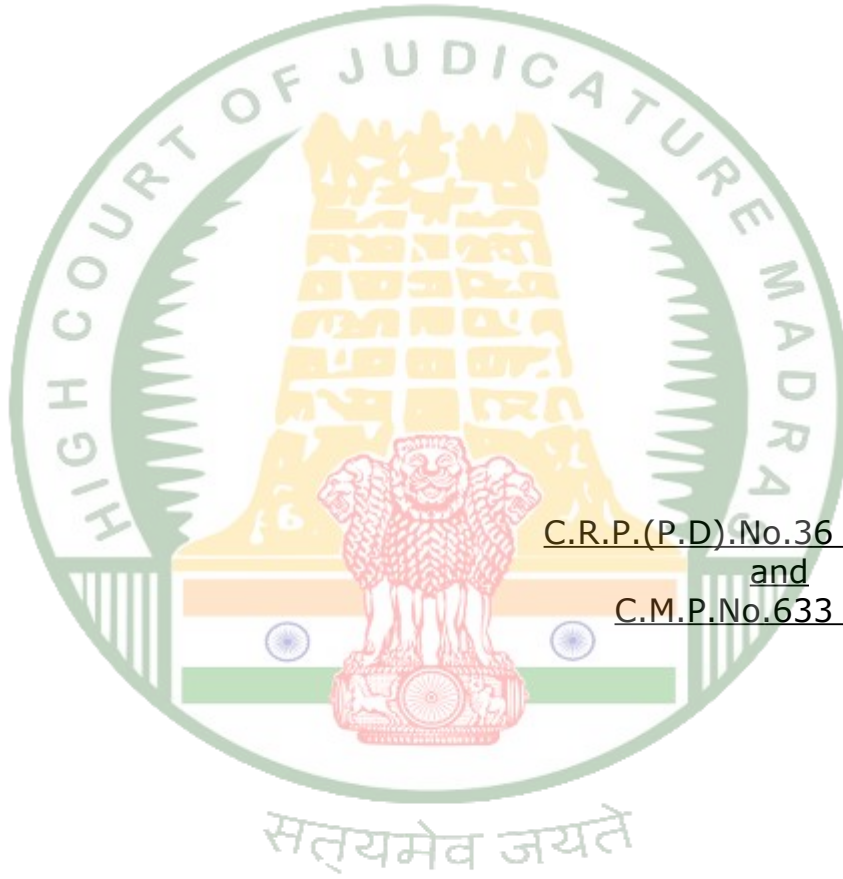
Speaking/non-speaking order

To

The learned Sub-ordinate Judge,
Poonamallee.

P.T. ASHA.J

jrs/arb



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