

CMP.No.6274 of 2004
in
SA.No.807 of 2004

G.K.ILANTHIRAIYAN, J.

This civil miscellaneous petition has been filed to appoint an Advocate Commissioner to measure the suit property with the help of a surveyor in O.S.No.210 of 1996 on the file of the District Munsif Court, Gobichettipalayam.

2. The learned counsel for the petitioners / appellants submitted that the petitioners filed a suit in O.S.No.210 of 1996 on the file of the District Munsif Court, Gobichettipalayam against the respondents for declaration in respect of the suit property for demarking the boundary line running east to west between their property and also for injunction restraining them from interfering with the peaceful possession and enjoyment of the suit property.

3. The respondents filed counter and the learned counsel for the respondents submitted that this petition has only been filed along with this second appeal, and it has been brought to notice of this Court and as such it is canvassed from later stage of second appeal, that too at the time of

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argument and therefore it is liable to dismissed. He further submitted that the suit was dismissed by the trial court with regard to the portion coloured pink in Ex.C.4, as against which the petitioners preferred an appeal suit and the same was also dismissed. Therefore, concurrently the courts below held as against the plaintiffs and now, the petitioners have come forward with this petition to appoint an Advocate Commissioner. In fact, already the application was filed before the trial court to appoint an Advocate Commissioner in I.A.No.146 of 1999 and the same was dismissed by the trial court, as against which the petitioner did not prefer any appeal. Therefore, prayed for dismissal of this petition.

4. Heard, the learned counsel appearing for the petitioners/ appellants as well as the respondents.

5. The petitioners/appellants filed suit for declaration and injunction and also prayed for demarking the boundary line running east to west between the petitioners' property and the respondents' property. The respondents disputed the claim of the petitioners and specifically took a stand that the vendors of the petitioners had no title over the property. Already an Advocate Commissioner was appointed and his report and plan

were marked before the trial court as Ex.C.1 and Ex.C.2. The additional report and plan were also marked as Ex.C.3 and Ex.C.4. Based on the Advocate Commissioner's report, the trial court partly decreed the suit. As per the Advocate Commissioner's report, uncoloured portion has been declared in favour of the plaintiffs and granted injunction and the prayer sought for demarking the property which was coloured as orange and rose in the Advocate Commissioner's additional plan, which was marked as Ex.C.4, was dismissed.

6. The learned counsel for the petitioners pointed out that without mentioning any measurement, the trial court simply decreed the suit as coloured portion. Therefore, an Advocate Commissioner has to be necessarily appointed to measure the property for exact measurement, as the suit was partly decreed in favour of the plaintiffs, it cannot be executed without any proper measurement.

7. Considering the above submissions made by the counsel on either side, this Court is of the considered view that it is necessary to appoint an Advocate Commissioner to measure the suit property. Further, the entire suit is revolving on question of extent and boundaries, and

unless a surveyor measures the property shown in different colours in the Advocate Commissioner's plan, the decree cannot be executed. Accordingly, this civil miscellaneous petition is allowed and Mr.M.Anandhan, Advocate, Gobichettipalayam (Cell No.94430 19558) is appointed as Advocate Commissioner, and the remuneration to the Advocate Commissioner is fixed as Rs.10,000/- (Rupees Ten Thousand only) payable by the petitioner. The Registry is directed to issue warrant to the said Advocate Commissioner forthwith and mark a copy of this order to the learned District Munsif, Gobichettipalayam.

8. The Advocate Commissioner is directed to measure the suit property in O.S.No.210 of 1996 on the file of the District Munsif Court, Gobichettipalayam with the help of a surveyor and submit his report and plan before the District Munsif Court, Gobichettipalayam, within a period of four weeks from the date of receipt of warrant. On receipt of the same, the learned District Munsif, Gobichettipalayam is directed to forward the Advocate Commissioner's report and plan to this Court forthwith.

9. On receipt of the report and plan from the learned District Munsif, Gobichettipalayam, the Registry is directed to list the matter before this Court.

17.02.2020

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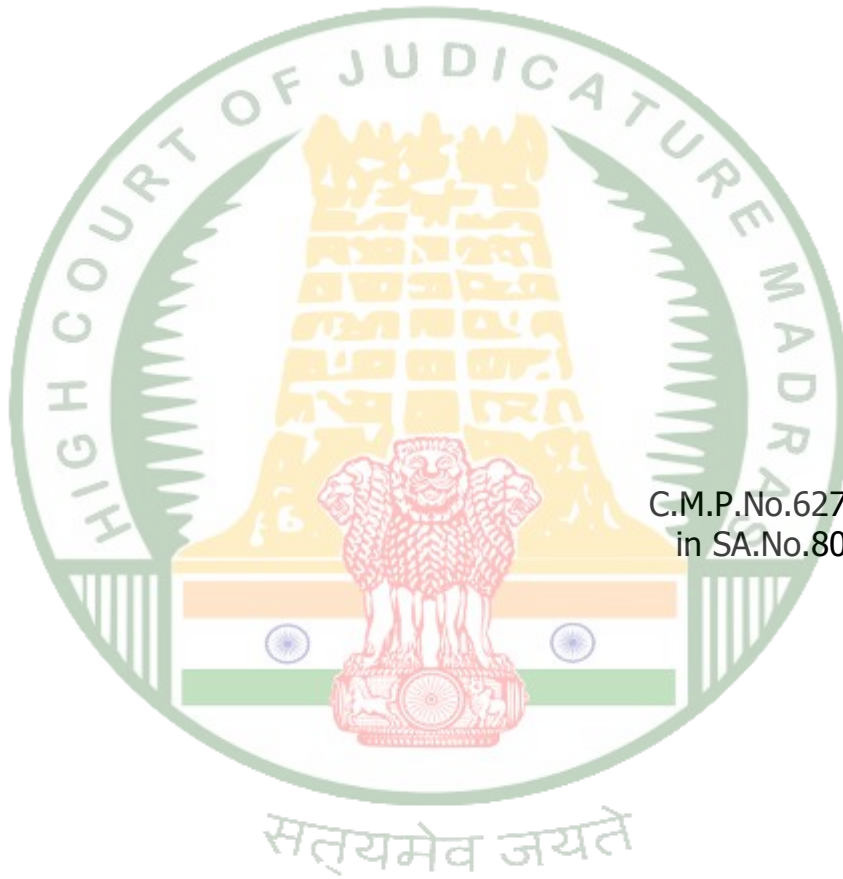


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