

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP(NPD).No.870 of 2007

and

M.P.No.1 of 2007

Thyagarajan

... Petitioner

Versus

1.R.Gururaj

2.The Executive Officer,
Marimman Temple,
Ootacamund.

3.Shafi

4.Yasmin

... Respondents

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India against the order and decreetal order dated 23.01.2007, made in E.A.No.6 of 2006 in E.P.No.67 of 2004 in O.S.No.23 of 1985, on the file of the learned District Munsif Court, Udhagamandalam.

For Petitioner : Mr.Srinath Sridevan

For R1 : Mr.S.K.Rakhunathan

For R2 : Mr.K.Ashok kumar

ORDER

This Civil Revision Petition has been filed against the order passed by the learned District Munsif, Udhagamandalam, in E.A.No.6 of 2006 in E.P.No.67 of 2004 in O.S.No.23 of 1985, dated

23.01.2007.

2 The first respondent herein has filed a suit in O.S.No.23 of 1985, before the learned Subordinate Judge, Nilgiris, for declaration of title and for recovery of possession and the said suit was decreed and thereafter, an execution petition has been filed by the plaintiff in E.P.No.67 of 2004, before the learned District Munsif, Nilgiris for execution of the decree and amendment has also been carried on. Thereafter, in the Execution Court delivery warrant was issued and when the Amin went to execution of the delivery warrant, has found some discrepancy in the door number and Ward number. Accordingly, return the delivery warrant with an endorsement that in view of some discrepancy in the physical features (door number and ward number) as on today, he has expressed his inability to execute the warrant. Taking note of the said endorsement made by the Court Amin, the plaintiff has filed E.A.No.6 of 2006, before the learned District Munsif, Ootacamund, seeking assistance of the Town Surveyor attached to the Municipality to identify the suit property, in which, he has obtained the decree and to effect the warrant and the said delivery application was allowed. As against the same, the first defendant in the suit has preferred this Civil Revision Petition.

3 Heard both sides and perused the materials placed on record.

4 The matter is at the execution stage and delivery warrant has also been issued. However, in view of some changes taken place in assigning new municipal door number and re-assessment of the old ward number, the suit property could not be identified by the Court Amin, resulting in returning the delivery warrant. The Execution Court has also taken note of the fact that the Government has also effected certain changes in the door number and hence, allowed the application.

5 Now, the only issue that arises for consideration is identification of the property? For delivery, the Amin has expressed his inability to identify the suit property and the Court has ordered for the assistance along with delivery as identified by the surveyor. At this juncture, it is to be stated that in the event of any error in identification of the property by the surveyor, the interest of the petitioner will be prejudiced.

6 Therefore, the order passed by the Trial Court is set

aside and the Civil Revision Petition is allowed to the limited extent that the Trial Court is directed to appoint the surveyor within a period of two weeks from the date of receipt of a copy of this order and thereafter, the Surveyor so appointed by the Trial Court and Court Amin shall jointly inspect and identify the property within a further period of three weeks thereafter and shall file a Joint Report before the Execution Court within a further period of four weeks and an opportunity must be given to the petitioner herein to file objection as to the identification of the property before the execution of the delivery.

7 With the above observations, the Civil Revision Petition stands allowed to the limited extent as stated supra and the order passed by the learned District Munsif, Udhagamandalam, in E.A.No.6 of 2006 in E.P.No.67 of 2004 in O.S.No.23 of 1985, dated 23.01.2007 shall stand modified. No costs. Consequently, connected Miscellaneous Petition is also closed.

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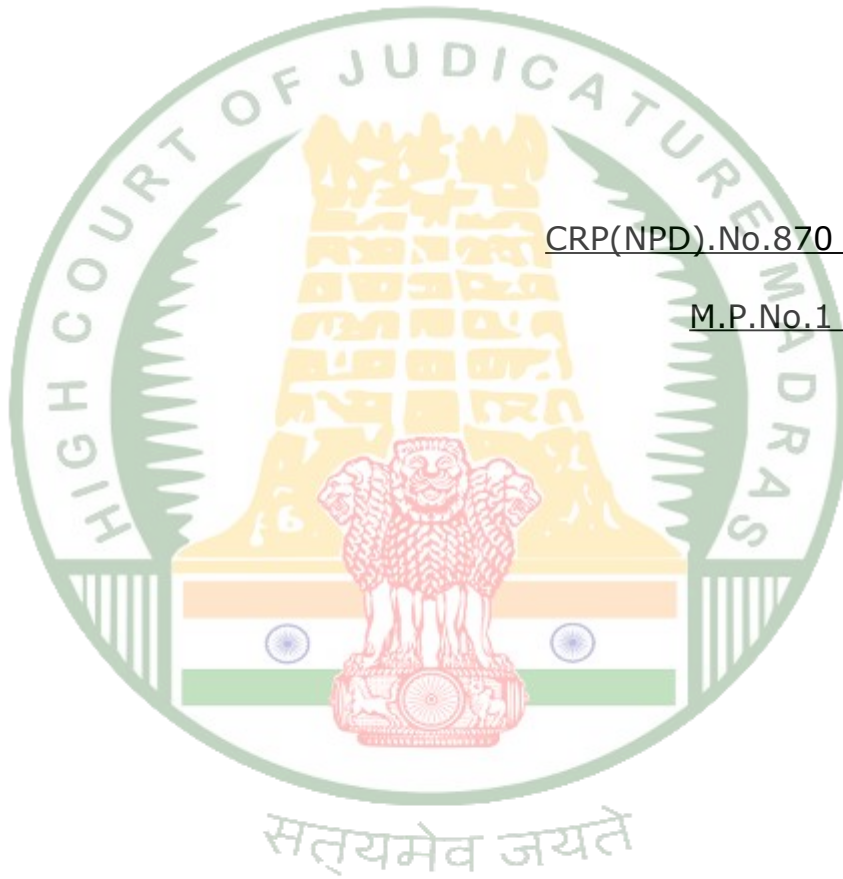
dua
Speaking Order:Yes/No

To
The District Munsif Court, Udhagamandalam.

RMT.TEEKAA RAMAN., J.

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