

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.11.2020

DELIVERED ON : 27.11.2020
CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM
C.R.P(PD)No.1593 of 2015
and
MP.No.1 of 2015

T. Viswanathan ... Petitioner/Plaintiff
Vs.
1.Chellammal
2.Mahalingam
3.Vellingiri
4. Rajammal ... Respondents / Defendants

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the Fair and Final Order dated 09.12.2014 made in I.A.No.147 of 2011 in O.S.No.279 of 2008 on the file of the I Additional District Munsif Court, Erode.

For Petitioner : Ms.K.Indhu Priya
for M/s.V.P. Sengottuvel

For Respondents : Mr.N.Manoharan

ORDER

This Civil Revision Petition has been filed by the petitioner/plaintiff against the dismissal of his application in I.A.No.147 of 2011 in O.S.No.279 of 2008 on the file of the I Additional District Munsif, Erode, dated 09.12.2014.

2. The petitioner herein had filed an application in I.A.No.147 of 2011 in O.S.No.279 of 2008 on the file of the I Additional District Munsif, Erode, under Order 26 Rules 9, 10 (2) & (3) and Section 151 of CPC to scrap the report and plan filed by one Mr.K.Kanagaraj, Advocate Commissioner and appoint some other advocate as second Commissioner to inspect and measure the suit property with a qualified surveyor and file his report with plan. The learned District Munsif had dismissed the said application by the order dated 09.12.2014. Feeling aggrieved, the petitioner/plaintiff had filed the present Civil Revision Petition.

3. Heard Ms.K.Indhu Priya for Mr.V.P.Sengottuvel, learned counsel for the petitioner and Mr.N.Manoharan, learned counsel for the respondents.

4. The learned counsel for the petitioner/plaintiff has submitted that even though the trial court while allowing the previous application which was filed by the respondents/defendants in I.A.No.347 of 2009 had appointed an Advocate Commissioner directing him to inspect and measure the suit property with the help of a Taluk surveyor and file his report with plan, the said Advocate Commissioner has not prepared any plan and filed along with his report, on the contrary, he has simply filed the plan given by the Surveyor. She further submitted that the Advocate Commissioner in his report has stated that a concrete building which is situated in the suit property has been constructed by making encroachment, but he has not specifically stated on which side the said encroachment has been made and what is the said extent. She further submitted that the Advocate Commissioner has stated in his report that he has noted a 20 feet width pathway east of concrete building but the said fact not found place in the plan prepared by the surveyor. She further submitted that the extent of the suit property also has not been mentioned either in the Advocate Commissioner's report or in the Surveyor's plan. She further submitted that as per the Natham Re-Survey held in the year 1976, the suit property is situated in R.S.No.664/8 but the surveyor in his plan has stated that the suit property is situated in Survey No.664/1 part and the same shows that he has not measured the property by referring to the recent survey plan and hence, the petitioner had filed an application in I.A.No.147 of 2011 to scrap the report and plan filed by the said Advocate Commissioner and appoint some other Advocate as Commissioner to inspect and measure the suit property with the help of a qualified surveyor and file a report with plan, but the learned District Munsif had erroneously dismissed the said application by saying that only after examination of the said Commissioner and the surveyor, the Court can decide the question whether the said report and plan can be accepted or rejected. She further submitted that the approach of the trial court is not proper and therefore, she prayed to allow the CRP and set aside the order passed by the learned District Munsif in I.A.No.147 of 2011 and allow the said application.

5. Per contra, the learned counsel for the respondents/defendants has submitted that in the report filed by the Advocate Commissioner, he has clearly stated that the petitioner had put up constructions by encroaching the property of the respondents/defendants and that is why the petitioner had

filed an application in I.A.No.147 of 2011 to scrap the said report. He further submitted that the Advocate Commissioner, in his report has clearly stated that he measured the suit property with the help of a Taluk Surveyor in the presence of both the parties and their counsel and that being so, there is no reason to scrap the said report and plan. He further submitted that unless the said Commissioner and the Surveyor are examined before the Court, the Court cannot come to the conclusion as to whether the said report and plan are to be accepted or not and hence, the trial court had rightly dismissed the said application and in the said order, this court need not interfere and therefore, he prayed to dismiss this CRP.

6. This Court has carefully considered the rival submissions made by the both side counsel and also perused the materials produced along with this CRP.

7. On perusal of the typed set of papers filed by the petitioner, it is seen that the petitioner herein had filed a suit in O.S.No.279 of 2008 on the file of the I Additional District Munsif, Erode, for the relief of permanent injunction restraining the respondents herein from trespassing into the suit property and disturbing the peaceful possession and enjoyment of the same. In the plaint, the petitioner had stated that the suit property is a site containing 262.15 sq.m situated in S.No.664/1 (As per Natham Survey New S.No.664/8) of Vadugapatty Village in which an old thatched hut is situated. The respondents/defendants had filed a written statement stating that they also purchased the property in the same survey number and unless both the properties are measured and located the suit property, the suit cannot be decreed. Further, they had filed an application in I.A.No.347 of 2009 to appoint an Advocate Commissioner to inspect and measure the suit property with the assistance of the Taluk Surveyor. The trial court had allowed the said application and appointed one Mr.K.Kanagaraj, Advocate, as Commissioner directing him to inspect the suit property and measure the same with the assistance of Taluk Surveyor and file a report with plan by 30.04.2010.

8. Though the said Advocate Commissioner had inspected the suit property and also measured the same with the help of the Taluk Surveyor, he did not file the report within the time stipulated by the court and hence, the trial court had closed the said application on 19.11.2010. Feeling aggrieved, the respondents herein had filed an application in I.A.No.22 of 2011 to re-open the I.A.No.347 of 2009 and receive the Advocate Commissioner's report. The said application was allowed by the order dated 22.01.2011. Feeling aggrieved, the petitioner

herein had filed CRP. No.1043 of 2011 before this court. This Court had dismissed the said CRP, however, made an observation that the dismissal of the said CRP will not preclude or fetter the parties to the disputes/controversies in the main suit to question the Commissioner's report during the conduct of the main trial of the case in the manner known to law. It appears that after re-opening of I.A.No.347 of 2009, the Advocate Commissioner had filed his report with surveyor's plan.

9. A perusal of the said Commissioner's report shows that the Advocate Commissioner has not prepared any separate plan. He simply filed the plan which was prepared by the surveyor. In the report, it is stated that a concrete building is there in the suit property. On the east of the said building, a 20 feet width pathway runs, but the said pathway is not mentioned in the surveyor's plan. Further, the Advocate Commissioner has not mentioned the measurements of the suit property. The Surveyor also has not mentioned the measurements of the suit property in his plan.

10. It is also to be pointed out that the Advocate Commissioner in his report has stated that the house and concrete building were constructed by encroaching a portion but he has not stated as to what extent the encroachment is made and on which direction. So it is clear that the Advocate Commissioner has not filed his report and plan with a view to help the court to take a proper decision in the suit. But without considering the aforesaid facts, the trial court had erroneously dismissed the application filed by the petitioner.

11. For the aforesaid reasons, this Court is of the view that the properties of both the parties have to be measured by referring to their title deeds, the FMB and other revenue records and get report with plan and then only the Court can take appropriate decision in the suit. But for that purpose, this court is of the view that the report and plan which were already filed by the Advocate Commissioner and surveyor need not be scrapped. Hence, the Commission warrant has to be re-issued to the same Advocate Commissioner to measure the properties of both the parties by referring to their title deeds, FMB and other revenue records and file additional report with plan.

12. In the result, this Civil Revision Petition is allowed. The order passed by the learned I Additional District Munsif, Erode, in I.A.No.147 of 2011 in O.S.No.279 of 2008 dated 09.12.2014 is set aside and the trial court is directed to re-issue the Commission warrant to the same Advocate Commissioner directing him to inspect and measure the properties

of both the parties with the help of a qualified surveyor by referring to the title deeds of both the parties, FMB and other revenue records and file report with plan by mentioning the physical features and measurements. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Asst.Registrar (CS VII)

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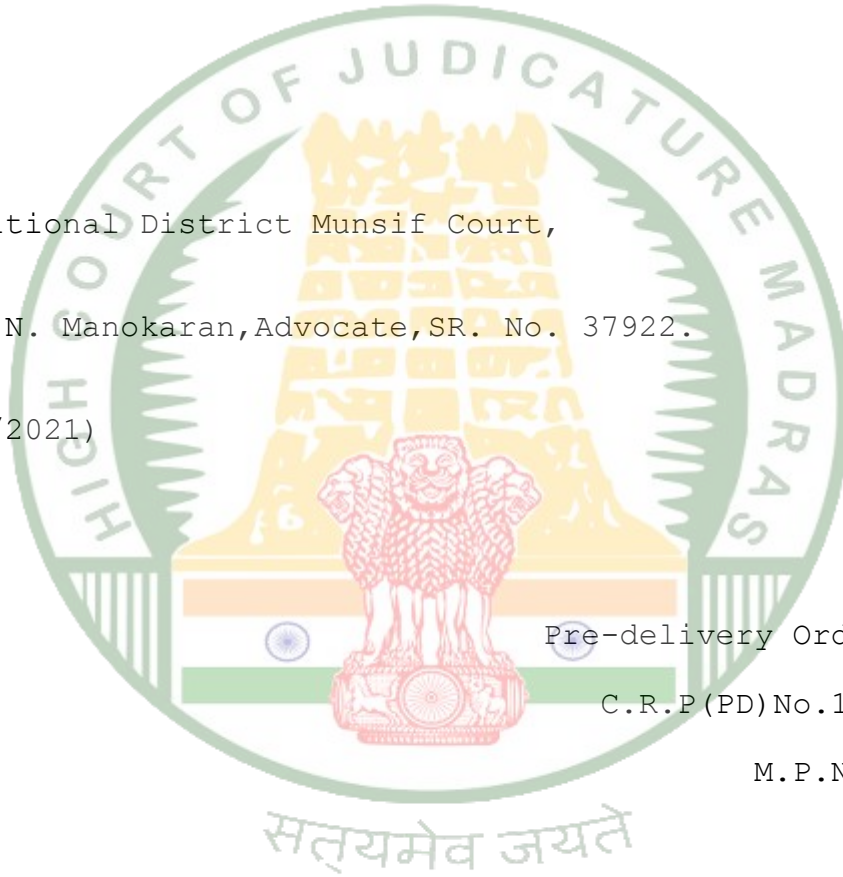
Sub Asst. Registrar

gv

To
The I Additional District Munsif Court,
Erode.

+1CC M/s. N. Manokaran, Advocate, SR. No. 37922.

SR II (CO)
NRA (01/02/2021)



Pre-delivery Order made in

C.R.P (PD) No.1593 of 2015
and
M.P.No.1 of 2015

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