

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2020

CORAM: THE HONOURABLE Mr.JUSTICE R.SUBRAMANIAN

CRP.(PD) No.1272 of 2018
and CMP.No.6538 of 2018

1.Mayilathal

2.Thiruvengkadasamy

3.Vijaya

4.Rasathi

Defendants

... Petitioners / Petitioners /

Vs.

1.Kandasamy Gounder

2.V.Arusamy

Plaintiffs

.. Respondents / Respondents /

Prayer : Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 15.06.2017 made in I.A.No.1323 of 2015 in O.S.No.457 of 2015 on the file of the District Munsif Court, Dharapuram, by allowing this Civil Revision Petition.

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For Petitioners : Mr.N.Ponraj

ORDER

The defendants in O.S.No.457 of 2015, aggrieved by the order appointing an Advocate Commissioner to measure the suit properties with the help of a Surveyor and to file a report, have come up with this revision.

2.The suit in O.S.No.457 of 2015 was filed by the respondents/plaintiffs seeking declaration of their title to A and B schedule properties and for permanent injunction restraining the defendant's from interfering with their possession as well as usage of "XY" pathway, which is claimed to be a common pathway for the parties

3. Pending suit, the plaintiffs filed an application in I.A.No.1323 of 2015, seeking appointment of Commissioner to measure the property and the "XY" pathway. The said application was resisted by the petitioners contending that there was no cause of action for laying the suit itself. It was further contended that the defendants were requested to co-operate in putting up a gate at the entrance of the pathway. There also appears to be some other dispute between the parties in respect of an irrigation canal which was obliterated by the plaintiffs and it is alleged that it is only because of those disputes, the plaintiffs have come up with the present suit.

4. The trial Court upon consideration of facts and circumstances found that the actual dispute is with respect to the boundaries of the suit properties. The trial Court also felt that it would be convenient for the Court to decide the issues that arise in the suit, by appointing an Advocate Commissioner. On the above conclusion, the learned trial Judge has appointed an Advocate Commissioner.

5. Challenge to the order is mainly on the ground that the dispute being as to the boundaries, the court must have directed the measurement of the property of the defendants also. The dispute regarding the boundaries cannot be solved by measuring the properties of one of the parties alone.

6. Mr. Ponraj, learned counsel appearing for the petitioners/defendants would point out that the trial Court having concluded that the dispute is with regard to boundaries, erred in allowing the application filed by the plaintiffs, thereby directing to measure the suit A & B schedule properties of the respondents/plaintiffs alone.

7. If this alone is the grievance of the petitioners, it could be resolved

by directing the Commissioner to measure the properties of the plaintiffs as well as the defendants, determine the boundaries and the existence of the pathway and its extent. Since the suit relates to the existence or otherwise of a pathway as well as to demarcate the exact boundaries between the parties, the Commissioner's report would go a long way to help the Court in resolving the issue in the suit. I therefore do not find any material irregularity or illegality in the order of the Court below. However, the Commissioner is directed to measure the properties of the plaintiffs as well as the defendants, demarcate the boundaries and the suit XY pathway with the help of a surveyor and file a report.

8. With the above modifications, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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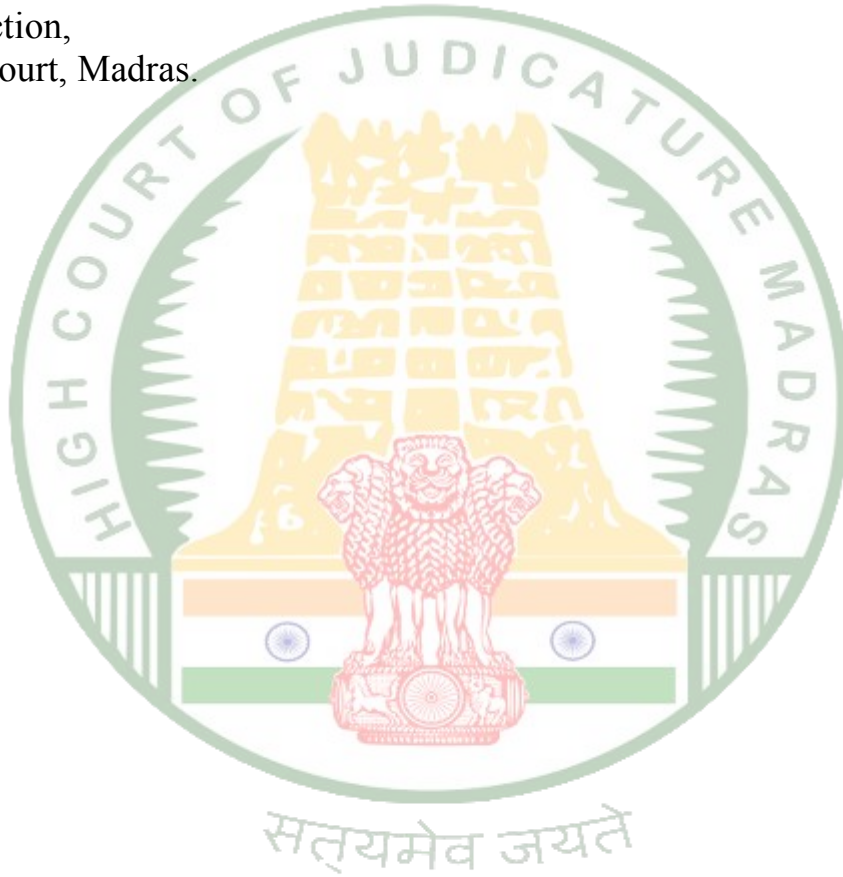
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Index : Yes / No

Speaking order / Non-speaking order

To:

- 1.The District Munsif
Dharapuram,
- 2.The Section Officer
VR Section,
High Court, Madras.



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R.SUBRAMANIAN.J.,

ds



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