

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 12.10.2020

DELIVERED ON : 04.11.2020

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD)Nos.1801 & 1802 of 2015
and
M.P.No.1 of 2015
in C.R.P.(PD)No.1801 of 2015

Arulmighu Sri Ramalinga
Sowdeswari Amman Temple
Omalur, Rep.by its Trustees

1. P.N.Krishnamoorthy
- S.Selvaraj (Died)
2. R.Balasubramaniam
3. R.Krishnamoorthy
4. B.Manokaran
5. R.Chandrasekaran

... Petitioners / Plaintiffs in both CRPs

Vs.

1. P.Mani
2. M.Senthilkumaran
3. Dr.Chandrasekaran
4. Navaneetha Jeyakrishnan
5. S.Mohanraj
6. M.Lakshmi
7. P.Babu

... Respondents / Defendants in both CRPs

C.R.P(PD)No.1801 of 2015 : Civil Revision Petition filed under Article
227 of Constitution of India, against the fair and decretal order dated

22.09.2014 passed in I.A.No.790 of 2012 in I.A.No.497 of 2008 in O.S.No.98 of 2007 on the file of the Sub Court, Mettur.

C.R.P(PD)No.1802 of 2015 : Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 22.09.2014 passed in I.A.No.560 of 2013 in I.A.No.497 of 2008 in O.S.No.98 of 2007 on the file of the Sub Court, Mettur.

For Petitioners : M/s. Hema Sampath, SC
for Mrs.R.Meenal, in both CRPs
For Respondents : No appearance in both CRPs

COMMON ORDER

The petitioners, who are the plaintiffs in O.S.No.98 of 2007, have preferred the present two Civil Revision Petitions against the dismissal of their interlocutory applications viz., I.A.Nos.790 of 2012 and 560 of 2013 in I.A.No.497 of 2008 in O.S.No.98 of 2007 vide order dated 22.09.2014 passed by the learned Sub Judge, Mettur,

2.For the sake of convenience, the parties are referred to as per their litigative status in the suit.

3.The necessary facts leading to the filing of these Civil Revision

Petitions are as follows:

3.1 The plaintiffs had filed a suit in O.S.No.98 of 2007 before the learned Sub Judge, Mettur, to declare their title over the suit schedule property and for permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the same. During pendency of the said suit, they had filed an application in I.A.No.497 of 2008 to appoint an Advocate Commissioner to note down the physical features of the suit schedule property as well as the encroachment said to have been made in the North-Western portion of the same.

3.2 The trial Court had allowed the said application and appointed an Advocate Commissioner to find out the encroachment if any made in the suit schedule property. Pursuant to the said order, the learned Advocate Commissioner inspected the suit schedule property and filed an interim report with plan on 07.09.2010.

3.3 Thereafter, the plaintiffs had filed another application in I.A.No.790 of 2012 in I.A.No.497 of 2008 in O.S.No.98 of 2007, to direct the learned Advocate Commissioner to locate the suit schedule property and also note down the physical features and encroachment and file a final report. During pendency of said application, the plaintiffs had taken out yet another application in I.A.No.560 of 2013 in I.A.No.497 of 2008 in O.S.No.98 of 2007 to reissue the warrant of Commission to the same Advocate Commissioner to complete the work assigned to her.

3.4 The trial Court passed separate orders dated 22.09.2014, thereby dismissing both the applications viz., I.A.Nos.790 of 2012 and 560 of 2013. Aggrieved over the same, the plaintiffs have filed the present Civil Revision Petitions.

WEB COPY

4. Though notice was served on the respondents and their names have also been printed in the cause list, there is no representation on their behalf either in person or through counsel. Hence, this Court is inclined

to decide these petitions, on merits, after hearing the arguments of the learned Senior Counsel appearing for the petitioners/plaintiffs and upon perusal of the materials filed along with these Civil Revision Petitions, including the orders impugned herein.

5.1 The learned Senior counsel appearing for the petitioners submitted that the petitioners, who are the Trustees of Arulmighu Sri Ramalinga Sowdeswari Amman Temple, Omalur, filed the aforesaid suit for the reliefs of declaration of their title over the suit schedule property and permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the same. She further submitted that during pendency of the said suit, the respondents 1 and 2 herein had encroached a portion of the suit schedule property and hence, the petitioners herein filed an application in I.A.No.423 of 2008 seeking permission to amend the plaint by including a prayer for mandatory injunction to remove the encroachment. It is also submitted that in order to prove the alleged encroachment, the petitioners filed an application in I.A.No.497 of 2008 for appointment of an Advocate

Commissioner to note down the encroachment and also physical features of the suit schedule property; that the trial Court, after considering the rival submissions, allowed the said application and appoint an Advocate Commissioner to measure the suit schedule property with the help of a Surveyor and file a report with plan; that in pursuance of the said order, the learned Advocate Commissioner had inspected the suit schedule property on 27.06.2009, on that date, the respondents herein objected for measurement of the suit schedule property and hence, the learned Advocate Commissioner was not able to execute the warrant; that subsequently, she made a request for police aid, which was ordered by the trial Court; that on 10.07.2010, with the aid of police, the Advocate Commissioner inspected the suit schedule property in the presence of both the parties, Village Administrative Officer and Surveyor, but, on that date also, the respondents/dependents raised strong objection for measuring the suit schedule property and hence, the learned Advocate Commissioner had filed only an interim report on 07.09.2010 along with Rough sketch; and that thereafter, she did not take any steps for executing the Commission warrant, which compelled the petitioners to

file an application in I.A.No.790 of 2012 to direct the learned Advocate Commissioner to execute the warrant and locate the survey stone and note down the physical features of the suit schedule property and encroachments found thereof. Adding further, the learned Senior Counsel submitted that in the said application, the respondents herein filed a counter stating that the Commissioner application in I.A.No.497 of 2008 was already closed on 08.10.2010 and hence, no relief can be granted in I.A.No.790 of 2012.

5.2 The learned Senior Counsel appearing for the petitioners further submitted that the petitioners after coming to know about the closure of the application in I.A.No.497 of 2008, preferred another application in I.A.No.560 of 2013 to reissue the warrant to the same Advocate Commissioner to complete the work assigned to her. However, the trial Court, without considering the fact that the Advocate Commissioner filed only an interim report and she did not file any final report, has erroneously dismissed the application by observing that already the learned Advocate Commissioner filed her report along with

plan. Thus, according to the learned Senior Counsel, if the said application filed to reissue the warrant giving direction to the learned Advocate Commissioner to complete the work and file a final report, is not allowed, the very purpose of appointing the Advocate Commissioner itself would be defeated. Therefore, the learned Senior Counsel prayed to allow the present Civil Revision Petitions by setting aside the orders impugned herein, so as to enable the learned Advocate Commissioner to complete the work and file a final report along with plan.

6. This Court has carefully considered the submissions made by the learned Senior Counsel for the petitioners and also gone through the materials filed along with these petitions.

7. On a perusal of the documents filed by the petitioners in the form of typed set of papers, it is seen that the petitioners claiming themselves to be the Trustees of Arulmighu Sri Ramalinga Sowdeswari Amman Temple, Omalur, had filed the aforesaid suit for declaration of their title over the suit schedule property and also permanent injunction

restraining the defendants from interfering with their peaceful possession and enjoyment of the same. During pendency of the said suit, the petitioners herein had filed an application in I.A.No.423 of 2008 stating that the respondents 1 and 2 herein encroached a portion of suit schedule property and hence, they sought permission to amend the prayer for mandatory injunction to remove the encroachment. Further, they had filed an application in I.A.No.497 of 2008 to appoint an Advocate Commissioner to note down the encroachment made in the suit schedule property and also physical features of the same. After hearing the parties, the trial Court had allowed the said application and appointed an Advocate Commissioner for the purpose mentioned therein. Accordingly, the Advocate Commissioner had executed the warrant and filed a report on 07.09.2010, stating that pursuant to the order of the trial Court, she inspected the suit schedule property on 27.06.2009 in the presence of both the parties along with their respective counsel and Village Administrative Officer; and that, she instructed the Village Administrative Officer to measure the suit schedule property, for which the learned counsel for the respondents raised strong objection and also

gave a memo that the suit schedule property can be measured only with the help of a Surveyor and hence, she did not execute the warrant on that day. The report of the learned Advocate Commissioner further proceeds to state that she filed a memo before the trial Court seeking police aid; accordingly, the trial Court has passed an order granting police aid; thereafter, the learned Advocate Commissioner again inspected the suit schedule property on 10.07.2010 after prior notice to both the parties, on that date, both the parties along with their respective counsel were present and the Village Administrative Officer and Surveyor were also present in the suit schedule property; when the Surveyor was about to locate the boundary stone and measure the suit schedule property, the learned counsel for the respondents strongly opposed the same and hence, the learned Advocate Commissioner could not complete the work assigned to her and she ultimately filed an interim report (முதல் நிலை அறிக்கை) along with rough sketch and FMB. Thus, it is very clear that the learned Advocate Commissioner did not measure the suit schedule property and find out the encroachment, if any. However, without considering the said fact, the trial Court had closed the application in

I.A.No.497 of 2008, as if the learned Advocate Commissioner had filed her final report.

8. It is further seen that without knowing about the closure of the application in I.A.No.497 of 2008, the petitioners had filed an application in I.A.No.790 of 2012 seeking direction to the learned Advocate Commissioner to execute the warrant of Commission and file a final report. In the said application, the respondents had taken a specific stand by way of counter that the Commissioner application in I.A.No.497 of 2008 was already closed. Therefore, the petitioners had filed another application in I.A.No.560 of 2013 to reissue the warrant of commission to the same Advocate Commissioner to complete the work assigned to her. However, the trial Court had dismissed the said two applications by the orders impugned herein.

WEB COPY

9. This Court is of the view that the purpose of appointing the learned Advocate Commissioner in the case on hand is to measure the suit schedule property and find out the encroachment if any thereof,

which can help the trial Court as a guiding factor in the process of decision making, whereas the learned Advocate Commissioner had not completed the work assigned to her in the warrant, due to the objection raised on the side of the respondents and she had filed only an interim report. In such circumstances, the trial Court should not have dismissed the aforesaid applications filed by the petitioners seeking to reissue the warrant, so as to enable the learned Advocate Commissioner to complete the work. Therefore, the orders impugned herein are liable to be set aside.

10. In the result, these Civil Revision Petitions are allowed. The orders dated 22.09.2014 passed by the learned Sub Judge, Mettur in I.A.Nos.790 of 2012 and 560 of 2013 in I.A.No.497 of 2008 in O.S.No.98 of 2007 are set aside. The trial Court is directed to reissue the warrant to the same Advocate Commissioner to complete the work assigned to her in the original warrant and measure the suit property with the help of a qualified surveyor and Village Administrative Officer by referring to the Revenue records and file a final report with plan. No costs. Consequently, connected Miscellaneous Petition is closed.

04.11.2020

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

av

To

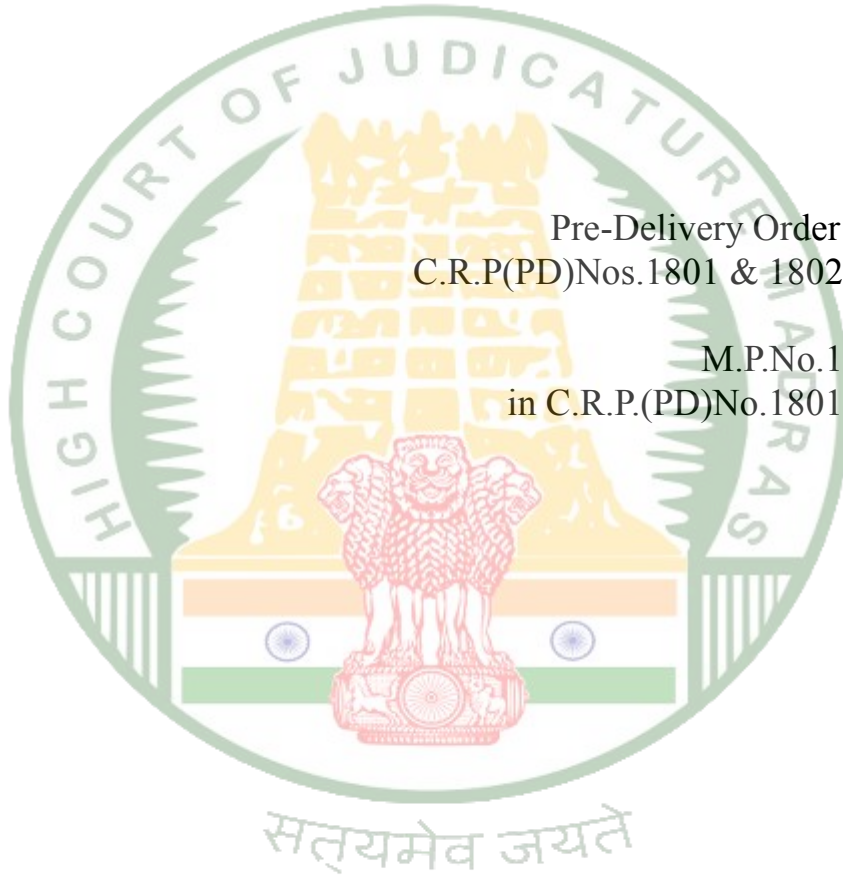
The Sub Court,
Mettur.



WEB COPY

P.RAJAMANICKAM, J.

av



Pre-Delivery Order made in
C.R.P(PD)Nos.1801 & 1802 of 2015
and
M.P.No.1 of 2015
in C.R.P.(PD)No.1801 of 2015

WEB COPY

04.11.2020