

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. PD 2019 of 2015

1. Sivanand Satyanand Charitable
Trust,
(Satyan and Yogashram),
rep. by Swami Vajrapani Saraswathi

2. R.Rajkumar Reddy
3. M.Sridharan
4. K.K.Ashok

... Petitioners

Versus

V.Vediyappa Konar

... Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the order passed in I.A. 599 of 2011 in I.A. 57 of 2010 in O.S. 35 of 2010 on the file of learned Principal District Munsif Court, Tiruvannamalai, dated 05.11.2014.

For Petitioners

: Mr.R.Raman Laal

For respondent

: Ms.Prithvi for
Mr.S.Kaithamalai Kumaran

ORDER

This Civil Revision Petition has been filed against the order clarifying the earlier order of appointing the Advocate Commissioner passed by learned Principal District Munsif, Tiruvannamalai.

2. The respondent/plaintiff, filed a suit for declaration, and recovery of possession in respect of 14 cents of land. According to the plaintiff, originally an extent of 6.05 acres of vacant land in Old Survey No.64/3 was purchased by the plaintiff. Thereafter, he has sold an extent of 5.88 acres to the petitioners/defendants herein. According to the petitioners, even though they have purchased 6.05 acres, the patta was granted only for 5.88 acres, and they have sold that extent to the petitioners/defendants, but the remaining 14 cents is still available, and they have not sold the same to the petitioners/defendants. Hence, the suit has been filed.

3. In the above suit, the above claim was disputed by the petitioners/defendants on the ground that, even though the plaintiff said to have purchased 6.05 acres, only an extent of 5.88 acres was available, for which patta was granted. After measuring the property, the available extent of land is 5.88 acres, and no extra area of 14 cents available as claimed by the plaintiff. In the above suit, earlier, the respondent/plaintiff has filed an application for appointment of an Advocate Commissioner to measure the property in Old Survey No.64/3. That application was allowed by the Trial Court. Challenging the same, the petitioners/defendants have filed a Civil Revision Petition before this court in C.R.P. PD 1686 of 2011 stating that, Old Survey No.64/3 is not available and sought to measure the property corresponding to new survey numbers, and they have also sought for a liberty to file necessary application seeking for clarification. This Court by an order dated 28.04.2011, considering the submissions made by the petitioners therein, has granted liberty to the petitioners to file an application before the Trial Court seeking for necessary clarification of earlier order

passed in I.A. 57 of 2010. Thereafter, the petitioners have filed the present application seeking for clarification, on the ground that, since old Survey No.64/3 is not available, re-survey number has been assigned and also subsequently divided into so many sub-divisions. Hence, the property cannot be measured as per the old survey number. Considering the above application, the Trial Court has modified the order stating that, the Commissioner has to measure the property after finding out with several sub-divisions made in Old Survey No.64/3, and to measure the same with the help of qualified Surveyor and file a report. Challenging the same, the present Civil Revision Petition has been filed.

4. Mr.R.Raman Laal, learned counsel appearing for petitioners would contend that, the old Survey No.64/3 is available as on today. Apart from that, at the time of purchasing the property, as per the patta, the available extent purchased by the petitioners was 5.88 acres, and they have also now put up a compound wall in the above property. In the said circumstances, based on the old Survey No.64/3, the Commissioner has to measure the property, and no useful purpose would be served by

measuring the property by the Advocate Commissioner with corresponding new survey number. The learned counsel further submitted that, already the property has been measured thrice. Hence, there is no necessary to appoint new Advocate Commissioner.

5. I have considered the submissions made by the learned counsel appearing for petitioners as well as learned counsel appearing for respondent and perused the records carefully.

6. The earlier order passed by the court below appointing Advocate Commissioner was challenged by them before this Court, and this Court has dismissed the C.R.P. with a liberty to the petitioner to file necessary application seeking for clarification. Now, the Trial Court has also clarified the order to that extent that, since old survey No.64/3 is not available, the Commissioner should identify the corresponding new survey numbers with the sub-divisions, and thereafter, he has to measure the property with the help of qualified Surveyor. If at all, the petitioners are sure that, an extent of 5.88 acres only available in the suit schedule property, the petitioner need not bother about the survey numbers. As the clarification sought by

the petitioners was redressed by the court below, I find no illegality or irregularity in the order passed by the court below, and I find no merit in this Civil Revision Petition. Accordingly, this Civil Revision Petition stands dismissed. No costs.

03.02.2020

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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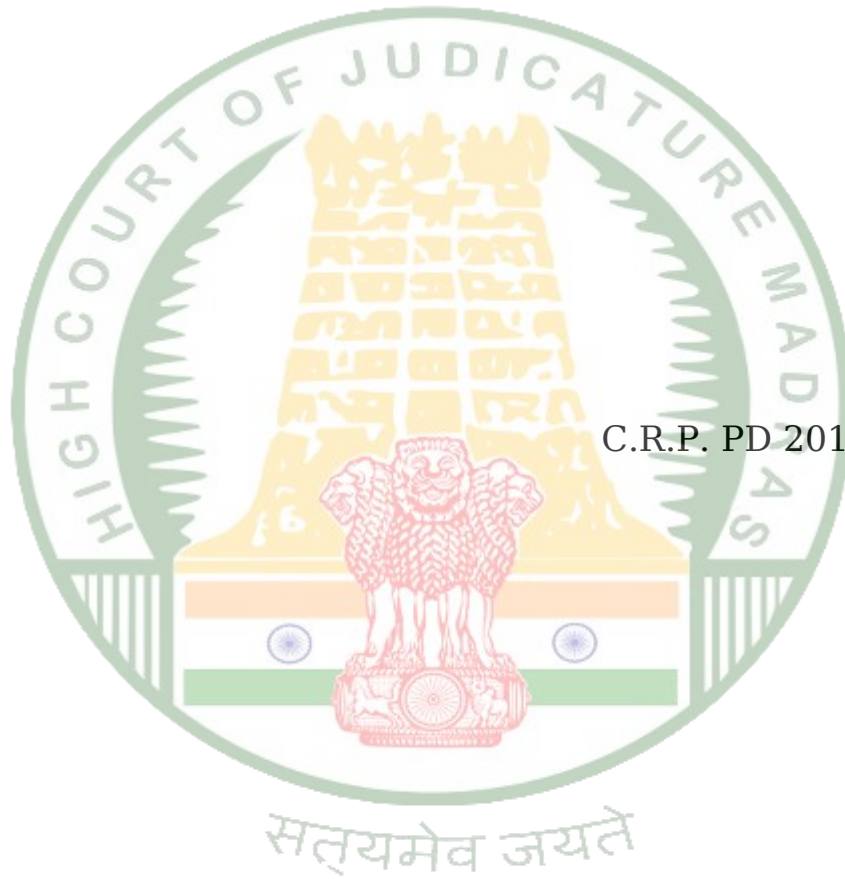
District Judge,
Tiruvannamalai.



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V.BHARATHIDASAN,J.

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