

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. PD 2572 of 2015

and
M.P. 1 of 2015

M.Ashokan

... Petitioner

Versus

1. M.Kannammal
2. M.Raja Panneerselvam
3. State of Tamil Nadu,
rep. by District Collector of
Tirppur District,
Tiruppur.

4. The Tahsildar,
Kangayam Taluk Office,
Tiruppur District.

... Respondents

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the order dated 27.03.2015 made in I.A. 6 of 2014 in O.S. 2 of 2014 on the file of the court of District Munsif of Kangayam.

For Petitioner : Mr.T.Dhanasekaran

For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed against the order appointing advocate commissioner to measure the suit property with the help of Surveyor as per the compromise final decree passed in O.S. 170 of 2002, and demarcate the boundaries of the property of petitioners and respondents and to file his report.

2. The 1st respondent is a mother of petitioner herein filed a suit seeking for the following relief :-

a) appointing a commissioner in the above matter directing the commissioner to measure the suit properties with the aid of Taluk Surveyor basing upon the title deeds of respective parties, and fix the 'F' line between the 1st and 2nd item of the suit properties by means of mandatory injunction;

b) restraining the 1st defendant, his men, agents, etc. from in any way and in any manner either

trespassing into the 1st item of the suit properties or disturbing their peaceful possession and enjoyment of plaintiffs over the 1st item of the suit properties by means of permanent injunction.

The above suit has been filed on the ground that, earlier, there was a suit for partition between the parties in O.S. 170 of 2000, on the file of Sub-Court, Dharapuram, and in the above suit, a compromise final decree has been passed on 21.06.2002 allotting properties to respective parties to the suit. According to the plaintiffs, the petitioner, who is 1st defendant therein attempted to encroach the 1st item of suit properties allotted to the plaintiffs based on the earlier partition decree. Hence, they have filed the present suit to appoint an advocate commissioner to demarcate the boundary line and also for consequential injunction. In the above suit, the plaintiffs have filed an application to appoint an advocate commissioner to demarcate the boundary line with the help of surveyor, and that application has been allowed. Challenging the same, the present Civil Revision Petition has been filed.

3. Mr.T.Dhanasekaran, learned counsel appearing for petitioners would submit that, already the property has been divided between the parties by means of compromise final decree, and the parties are enjoying the property as per the decree, and there is no encroachment as alleged by the plaintiffs. Hence, the suit has been filed only to harass the petitioner. As already the boundary line has been clearly demarcated, and the parties are enjoying their respective shares, the filing of present application is amounting to abuse of process. Hence, this Civil Revision Petition is liable to be dismissed.

4. I have heard the submissions of learned counsel appearing for petitioner and perused the records carefully.

5. The suit has been filed mainly for the purpose of fixing the boundary line as per the final decree passed in the earlier suit. The contention of the plaintiffs is that, after the final decree, the petitioner/1st defendant has encroached certain extent of property belongs to plaintiffs. Hence, the property should be measured, and boundary line should be fixed, and for that purpose, the Commissioner is sought to be appointed. In the

above circumstances, if the property has been measured by advocate commissioner as per compromise final decree, no prejudice would be caused to the petitioner. But, the petitioner's contention is that, he has not encroached the property belong to the plaintiffs. If the commissioner measure the property as per the earlier decree, it will be made clear that, whether any encroachment made in the property belongs to the plaintiffs. In the said circumstances, the court below has decided the issue in proper perspective, and allowed the application. I have also gone through the materials, I do not find any 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. Consequently, the connected Miscellaneous Petition is closed.

सत्यमेव जयते

11.02.2020

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

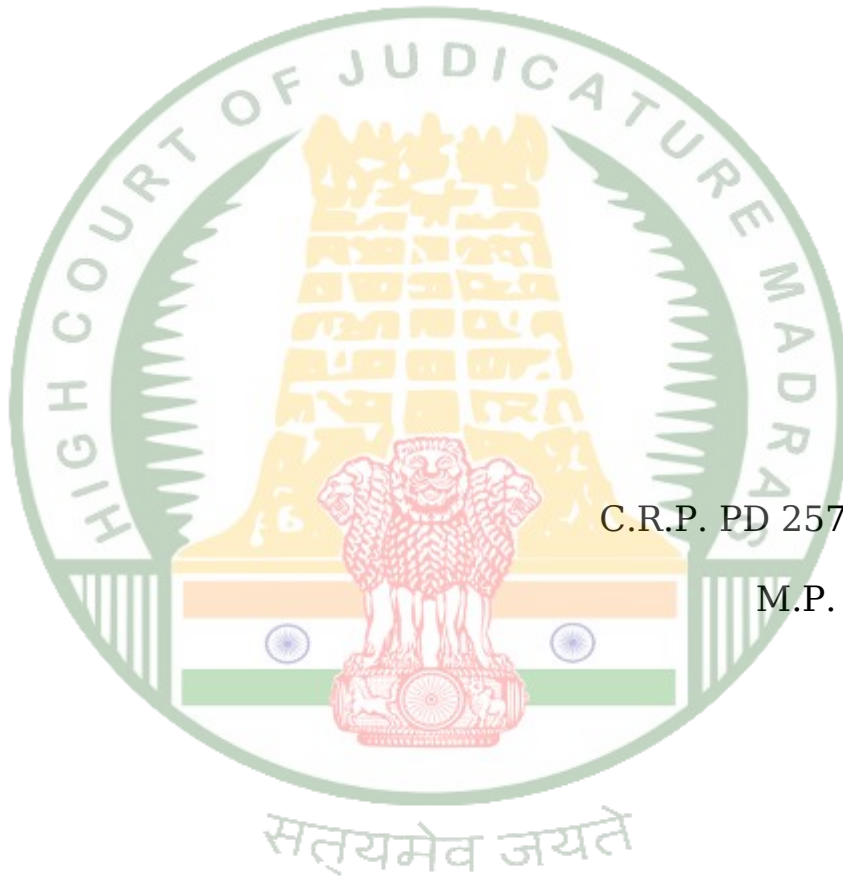
District Munsif Court,

5/6

Kangeyam.

V.BHARATHIDASAN,J.

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