

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(P.D).No.1414 of 2019
and C.M.P.No.9300 of 2019

1.Mahathama
2.Vellaiyangiri
3.Mayandi
4.Naveen
5.Ganapathi

...Petitioners

Sathyavani

Vs.

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Indian Constitution of India to set aside the fair and decretal order passed in I.A.No.33 of 2017 in I.A.No.358 of 2014 in O.S.No.47 of 2014 dated 06.12.2018 on the file of the learned District Munsif Judge, Harur.

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For Petitioners : Mr.M.Raja Sekhar

For Respondent : No appearance

ORDER

This Petition has been filed to set aside the fair and decretal order passed in I.A.No.33 of 2017 in I.A.No.358 of 2014 in O.S.No.47 of 2014 dated 06.12.2018 on the file of the learned District Munsif Judge, Harur.

2.The suit in O.S.No.47 of 2014 has been filed by the respondent/plaintiff for the relief of declaration and injunction.

3.During the trial, the revision petitioners/defendants filed the I.A.No.33 of 2015 in I.A.No.358 of 2014 in O.S.No.47 of 2014, to delete the word measurement in the Commissioner warrant and to correct the warrant issued by the Court in I.A.No.358 of 2014.

4.The learned trial Judge dismissed the application on the ground that the memo was already filed and the relief was already been granted to the petitioners.

5.Aggrieved by the order of the learned trial Judge in I.A.No.33 of 2015 in I.A.No.358 of 2014 in O.S.No.47 of 2014 dated 06.12.2018, the revision petitioners are before this Court with the revision petition.

6.The learned counsel for the petitioners submitted that the trial Court corrected the Commissioner warrant issued in I.A.No.358 of 2013 for

measuring the suit property. Originally, the Commissioner was appointed to note down the physical features of the suit property. On the request of the Commissioner, warrant was modified with regard to measuring the suit property with the help of the Surveyor. Against this modification, the petitioner filed I.A.No.33 of 2016 to set aside the order dated 15.04.2014, in the Commission warrant. The trial Court dismissed the petition on the ground that the petition was filed belatedly and also hold good, in order to adjudicate the case completely, the report of the Commissioner along with Surveyor is needed. Aggrieved by this the revision petitioners have filed this revision. The order of the trial Court is unjust. The suit is only for declaration and injunction. The plaintiff has to prove her title, and she cannot be permitted to collect evidence with the help of the Commissioner and the learned counsel for the petitioners further reiterated other grounds raised in the grounds of revision and pleaded to allow the revision petition.

7. Heard the learned counsel for the petitioners and perused the records. The petitioners are the defendants in the suit. The suit is filed by the respondent/plaintiff against the defendants with the prayer to declare the title over the suit property and permanent injunction against the defendants

with regard to plaint schedule properties. In that case, Advocate Commissioner was appointed in I.A.No.358 of 2018, to note down the physical features of the suit property. Subsequently, on the request of the Commissioner, Commissioner Warrant was modified to measure the suit property with the help of the Surveyor on 15.04.2014. Aggrieved by this modification, the petitioners filed I.A.No.33 of 2016 to set aside the modification made in the Commissioner Warrant. Admittedly the suit is for declaration and injunction. The plaint allegation is that the defendants trespassed in the properties of plaintiff and altered the ridges of the land. In order to prevent further alteration of ridges, by the defendants, the Commissioner was appointed to note down the physical features. In order to fix the boundaries of the plaintiff, the Commissioner warrant has been altered to measure the suit property with the help of the Surveyor. In order to adjudicate the dispute between the parties, the measurement with the help of the Surveyor is required to the trial Court. The report of the Commissioner with the Surveyor measurement has to be considered at the time of trial, while adjudicating the case. Therefore, further modification to measure the suit property along with the Surveyor is legally sustainable. I

find no error in the order of the trial Court and no merit in the Civil Revision Petition.

8.Hence, the Civil Revision Petition is dismissed. No costs.
Consequently connected miscellaneous petition is closed.

18.12.2020

Index: Yes/No
Speaking Order: Yes/No
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To
The District Munsif Judge, Harur.

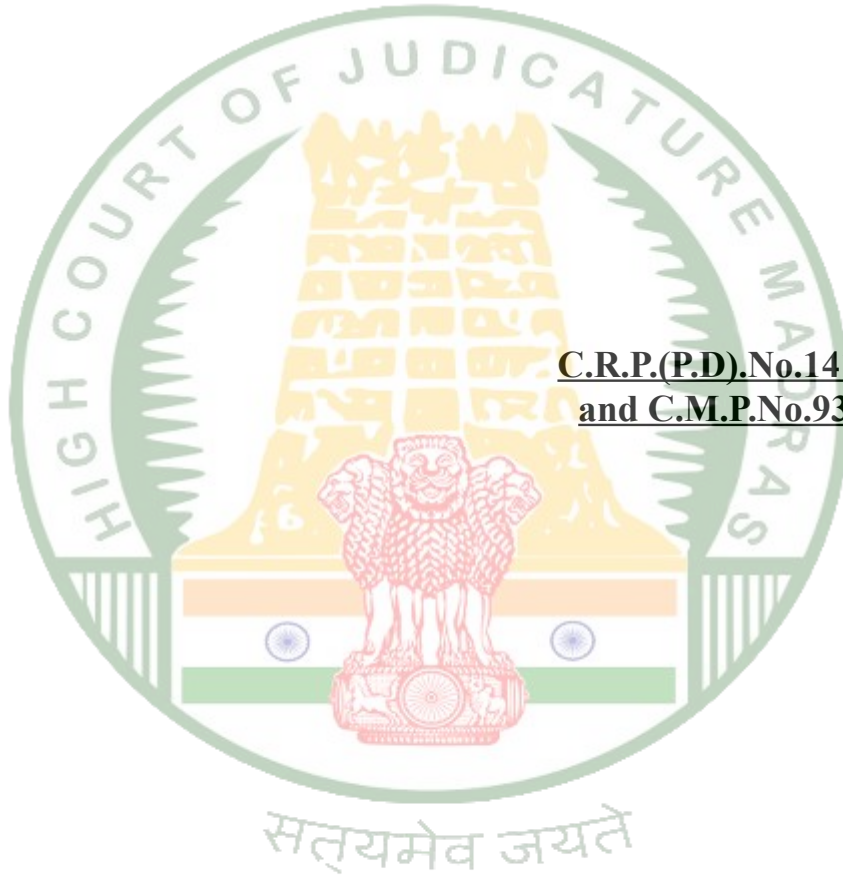


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V.SIVAGNANAM.J,

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