

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.2456 of 2018
and

C.M.P.Nos.15021 of 2018 and 25018 of 2019

Alamelu .. Petitioner/Respondent/Defendant

Vs.

1.Ramalingam

2.Prakash ..Respondents/Petitioners/Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decreetal order in I.A.No.823 of 2017 in O.S.No.239 of 2016 on the file of the District Munsif Court, Attur dated 06.02.2018 and prays that the Civil Revision Petition may be allowed with costs throughout.

For Petitioner : Mr.C.Jagadish

For Respondents : Mr.K.Rajasekaran

O R D E R

This matter is taken up for hearing through Video-Conferencing.

2. The defendant in O.S.No.239 of 2016 is the petitioner. The challenge is to the order made in I.A.No.823 of 2017 appointing a second commissioner to measure the suit property with the help of the surveyor and submit a report and plan.

3. The suit is for declaration of title to the suit property (including the western wall) as absolute property of the plaintiff and for injunction restraining the defendant from interfering with the plaintiffs peaceful possession and

enjoyment. Along with the suit I.A.No.1189 of 2016 was filed for appointment of commissioner. A commissioner was in fact appointed on 12.12.2016 and he visited the suit property on 15.12.2016. He filed his report and plan. Subsequently, the plaintiff came up with the present application seeking appointment of another commissioner to measure the suit property with the help of surveyor.

4. This was resisted by the defendant contending that the second application is not maintainable. The trial court rejected the objection and allowed the application on the ground that the commissioner's report will be helpful in resolving the controversy. Aggrieved, the defendant has come up with this Revision.

5. I have heard Mr.C.Jagadish, learned counsel for the petitioner and Mr.K.Rajasekaran, learned counsel for the respondents.

6. Mr.C.Jagadish, learned counsel appearing for the petitioner would vehemently contend that none of the requirements of Order XXVI Rule 10(3) and Order XXVI Rule 12 (2) have been satisfied to enable the court to appoint second commissioner. The law regarding the appointment of second Commissioner is well settled. Unless it is demonstrated that the report of the first commissioner is erroneous or that the first commissioner had exceeded the scope of the warrant of appointment and his report is scrapped the court cannot appoint a second commissioner.

7. As rightly pointed out by Mr.C.Jagadish, learned counsel appearing for the petitioner the affidavit filed in support of I.A.No.823 of 2017 is nothing but a photocopy of the affidavit in the earlier application viz., I.A.No.1189 of 2016 except the addition of paragraph 7. There is no averment as to how the report of the first commissioner is erroneous and is liable to be scrapped.

8. The learned trial Judge had completely overlooked the requirements of law and has allowed the application with general observation. Therefore, the order of the trial court is liable to be set aside. Hence, the revision is allowed and the order of the trial court in I.A.No.823 of 2017 is set aside and the said I.A.No.823 of 2017 will stand dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

9. It is however open to the plaintiff to show that the report of the first commissioner is erroneous by letting in appropriate evidence or by examining the said commissioner at the time of trial and if the court finds that the report is erroneous, it will be open to the court to appoint a second commissioner.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

dsa
To

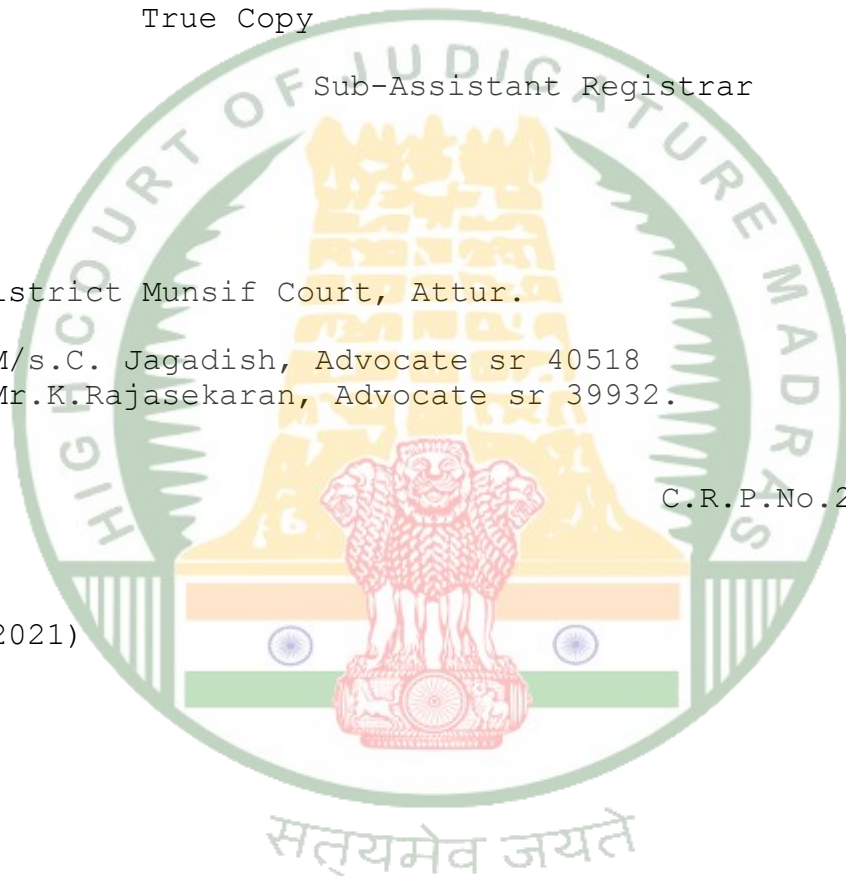
The District Munsif Court, Attur.

+1 CC to M/s.C. Jagadish, Advocate sr 40518

+1 CC to Mr.K.Rajasekaran, Advocate sr 39932.

C.R.P.No.2456 of 2018

KJ(CO)
SP(04/01/2021)



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