

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2934 of 2018 and
CMP No.17103 of 2018

1. Rajathi
2. Selvaganapathi .. Petitioners

Vs.

1. Arukkani
2. C.Sengottuvelan
3. Selvam
4. Bakthavatchalam
5. Karthigamani ... Respondents

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, against the fair and decreetal order of the learned Principal District Munsif, Salem, dated 08.01.2018 in I.A.No.971 of 2017 in O.S.No.31 of 2010.

For Petitioner : Mr.T.M.Hariharan

For Respondents : Mr.V.Sekar

ORDER

The plaintiffs in O.S.No.31 of 2010 which is a suit for declaration, recovery of damages and for mandatory injunction, aggrieved by the dismissal of an application for reissue of warrant to the same Commissioner to measure the property as per the final decree passed in O.S.No.273 of 1998 have come up with this revision.

2. The petitioners were the defendants in O.S.No.273 of 1998. The said suit was for partition between the vendors of the respondents and the petitioners herein. Under a final decree dated 21.09.2000, the petitioners were allotted the southern portion measuring 75 cents and the respondents' vendors were allotted 88 cents. The parties were given a common right in the Well along with a right of way through the Oodai and right of irrigation from the Well. It is the case of the plaintiffs that the defendants who are purchasers from the defendants in O.S.No.273 of 1998 had encroached upon a portion of the property allotted to them under the final decree. The petitioners filed an application in I.A.No.804 of 2015 seeking appointment of a Commissioner. A Commissioner was appointed and he filed a report

and plan, after measuring the property as per the Revenue Records. The plaintiffs filed their objections to the said report and plan. Thereafter, the plaintiffs filed an application for measuring the property as per the final decree passed in O.S.No.273 of 1998 which is the source of title for both the parties. The said application for reissue of warrant was rejected by the Court on the ground unless it is demonstrated that the Commissioner's report is wrong reissue of warrant cannot be ordered.

3. I have heard Mr.T.M.Hariharan, learned counsel appearing for the petitioners and Mr.V.Sekar, learned counsel appearing for the respondents.

4. Mr.T.M.Hariharan, learned counsel appearing for the petitioners would vehemently contend that the trial Court has erred in concluding that the warrant can be reissued to the same Commissioner or a second Commissioner can be appointed only in cases where the first report is scraped or found to be faulty. He would submit that all that the petitioner's want is measurement as per the final decree passed in O.S.No.273 of 1998. According to him, if the property is measured in terms of the final Decree , the fact that there is an encroachment in the Northern side of the property

will come to light. According to him the general principle of law that the appointment of a second Commissioner or reissue of the warrant to the same Commissioner could be made only when the Court finds that the report is defective and scraped cannot be applied to the facts of the present case.

6. Contending contra, Mr.V.Sekar, learned counsel appearing for the respondents would submit that the Commissioner appointed had measured the property in terms of the Revenue records and the Revenue Sub division was effected in terms of the final decree and therefore there cannot be any difference between the two.

7. I have considered the rival submissions.

8. The final decree passed in O.S.No.273 of 1998 along with the plan has been produced before me. The commissioner's report in the earlier suit namely O.S.No.2097 of 2004 has also been placed before me. The plan annexed to the said report is a Xerox copy of the revenue plan. A comparison of these two plans show that the measurements particularly on the Eastern side are totally different. While as per the final decree, the B Schedule property which is allotted to the defendants is shown to be of a north south length of 81 feet 8 inches on the east, the Revenue plan shows

the eastern north south measurement at 70 feet 6 inches. Therefore, there seems to be some mistake in the revenue plan. Once it is conceded that both the parties claimed title under the final decree in O.S.No.273 of 1998, it will be in the interest of justice, to have the property measured, as per the said final decree, so that the parties are not allowed to litigate further on the same title.

9. No doubt, a commission warrant cannot be re-issued unless the Court concludes that the first Commissioner's report is doubtful and it is scraped. From the available material, I am able to see that the Commissioner's report based on the Revenue plan would lead to unnecessary controversy and create anomaly in the case of both the parties. It is seen from the report and plan of the Commissioner that he has not given the linear measurements which makes his report highly doubtful. Since, both the parties are claiming only under the final decree, I am of the considered opinion that measurement of the property as per the plan attached to the final decree would be just and proper. I, therefore, scrap the first report of the Commissioner and direct the warrant to be reissued to the same Commissioner to measure the property as per the plan attached to the

final decree made in O.S.No.273 of 1998 and file his report. The trial Court is directed to reissue the warrant with a specific direction to the Commissioner to measure the property as per the plan attached to the final decree made in O.S.No.273 of 1998 and file his report at the earliest. The Civil Revision petition is therefore allowed and the order of the trial Court rejecting the application is set aside. I.A.No.917 of 2017 will stand allowed as stated above. No costs. Consequently, connected miscellaneous petition is closed.

02.09.2020

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Index: No
Speaking order

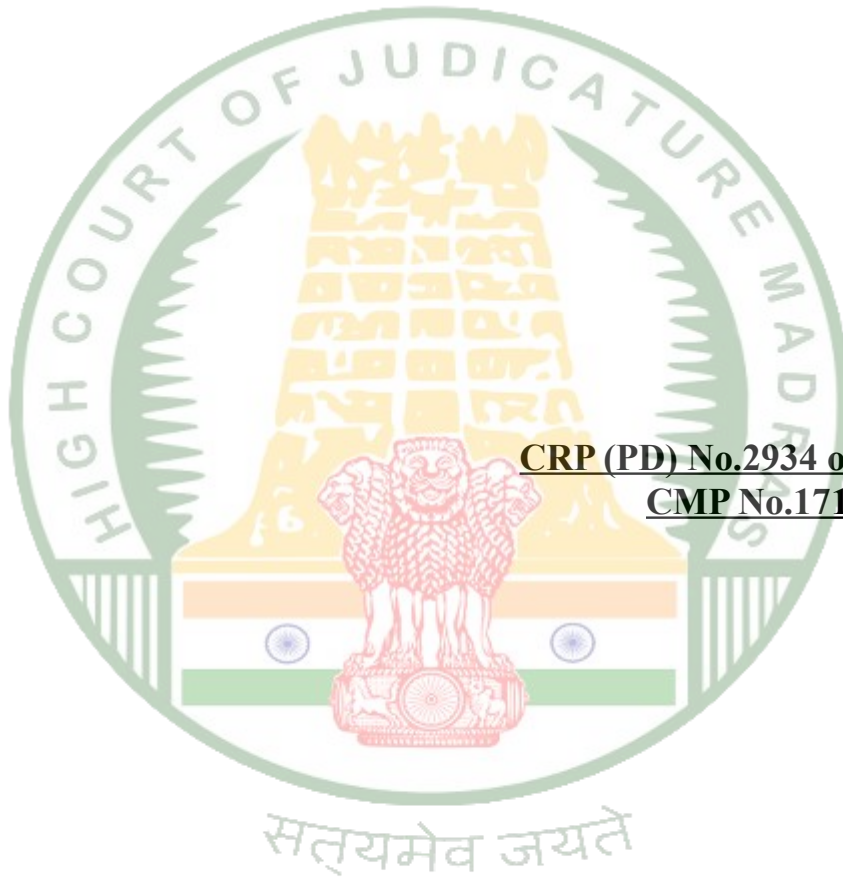
To

The Principal District Munsif, Salem.

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R.SUBRAMANIAN, J.

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