

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2020

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THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(PD).No.37 of 2018
and
C.M.P.No.107 of 2018

P.Kandasamy

...Petitioner

Vs.

1.Kaliyamoorthy
2.Mariayappan
3.Kalaiselvan

4.Block Development Officer,
Rep.by its Kumaratchi Panchayat Union,
Kumaratchi and Post,
Kattumannar Koil Taluk.

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order dated 14.12.2015 made in I.A.No.628 of 2015 in O.S.No.21 of 2014 on the file of the Principal District Munsif, Chidambaram.

For Petitioner : Mrs.Kavitha
for Ms.G.Sumitra
For Respondents : No appearance
for R1 to R3
Mr.Dev Narendran
Government Advocate for R4

ORDER

Challenging the order dated 14.12.2015 passed in I.A.No.628 of 2015 in O.S.No.21 of 2014 on the file of the Principal District Munsif Court, Chidambaram, the plaintiff has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.21 of 2014 seeking for mandatory injunction and thereby, directing the defendants 1 to 3 to remove the encroachments in the 'B' schedule property. The defendants filed the written statement and contested the suit. In the said suit, the plaintiff filed an application in I.A.No.86 of 2014 seeking for appointment of an Advocate Commissioner to inspect the suit property and note down the physical features. The Trial Court appointed the Advocate Commissioner and a report was filed by the Advocate Commissioner

before the Trial Court. In the said report, it is stated that both the parties are objected to measure the suit property and therefore, without assistance of the surveyor, it cannot be possible to measure the property. Thereafter, in the year 2015, the plaintiff filed another application in I.A.No.628 of 2015 seeking for re-issuance of warrant to the same Advocate Commissioner to note down the physical features with the assistance of the Surveyor or to appoint a fresh Advocate Commissioner. The trial Court dismissed the application by holding that the petitioner can establish his case, at the time of trial, in the suit.

3. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the 4th respondent. Despite service of notice on the respondents 1 to 3, there is no representation either in person or through counsel.

4.The learned counsel for the petitioner submitted that in the Advocate Commissioner's report, it is stated that the Advocate

Commissioner was not in a position to measure the property, since both the parties are objected for taking measurements of the suit property. The learned counsel further submitted that without assistance of the surveyor, the suit property cannot be measured.

5. Since the issue involved in this petition is to determine the issues in the said suit, this Court of the view that it is necessary to consider the interim application filed by the petitioner by allowing the same and directing the Advocate Commissioner to re-inspect the property and measure the suit property with the assistance of the surveyor, in the presence of both the parties.

6. In such view, the impugned order is quashed and the trial Court is directed to re-issue warrant to the same Advocate Commissioner to re-inspect the suit property and note down the physical features with the assistance of surveyor. Such exercise shall be completed by the Principal District Munsif, Chidambaram as expeditiously as possible.

7. With the above observations, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

13.03.2020

Index : Yes / No

Internet : Yes / No

Speaking order / Non Speaking Order

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To

1. The Principal District Munsif,
Chidambaram.

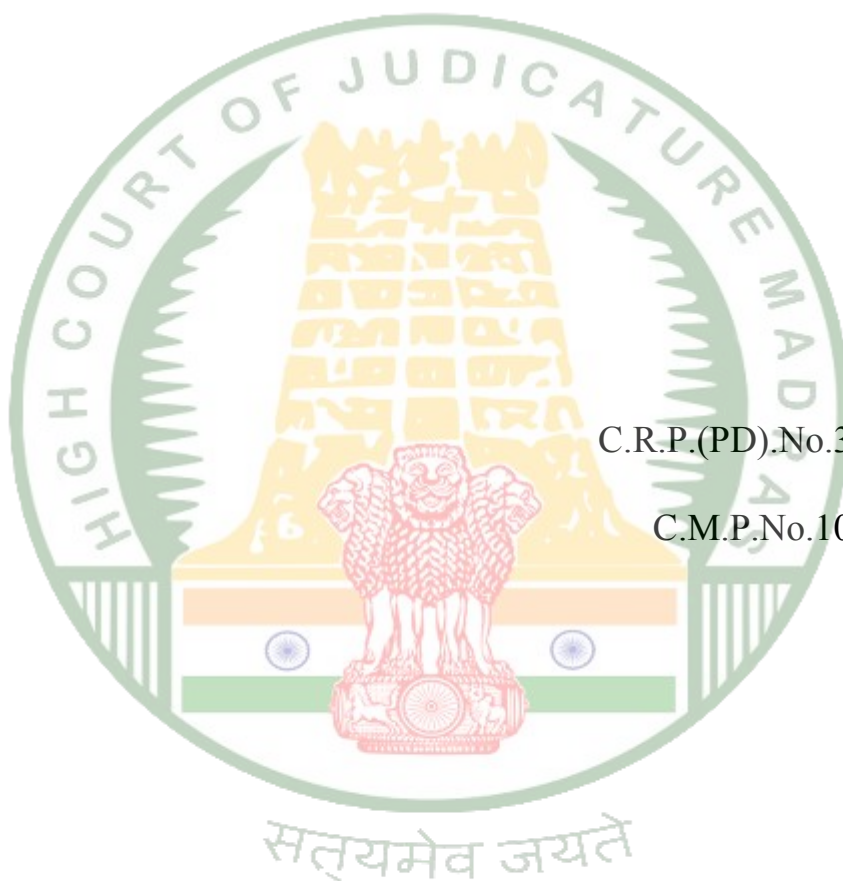
2. The Kumaratchi Panchayat Union,
Block Development Officer,
Kumaratchi and Post,
Kattumannar Koil Taluk.

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D.KRISHNAKUMAR, J.,

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