

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(PD).No.1993 of 2014

and

M.P.No.1 of 2014

Thillaikannu

... Petitioner/Plaintiff

Versus

1.Pattapu
2.Raman
3.Sivaji
4.Achudhan

...Respondents/Defendants

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 08.04.2014 made in I.A.No.238 of 2014 in O.S.No.134 of 2012, on the file of the learned Additional District Munsif, Chengam.

For Petitioner : Mr.C.Munusamy
For Respondents : Mr.A.Rajesh Kanna

ORDER

This Civil Revision Petition has been filed against the order passed by the learned Additional District Munsif, Chengam, in I.A.No.238 of 2014 in O.S.No.134 of 2012, dated 08.04.2014.

2 The plaintiff in the suit O.S.No.134 of 2012 is the revision petitioner herein.

3 Brief facts of the case are as follows:

(i) The plaintiff/revision petitioner has filed the suit in O.S.No.134 of 2012 before the learned Additional District Munsif, Chengam, seeking for the relief of declaration of title and for recovery of possession alleging that on the Western side of the property, the defendant has encroached upon 18 cents and schedule of the property is mentioned as "B" schedule along with the plan sketch on the revenue map marked as red portion.

(ii) During the pendency of the said suit, he had filed an application in I.A.No. 355 of 2012 for appointment of an Advocate Commissioner to note down the physical features of the said property. The Advocate Commissioner has filed a report indicating encroachment to an extent of 14.25 cents.

(iii) Thereafter, the present I.A.No. 238 of 2014 has been filed by the petitioner/plaintiff to amend the schedule of the property restricting from 18 cents to 15 cents. The defendant contended that it is without four boundaries and by way of amendment, he is trying to alter the structure of the suit property and the said IA was dismissed by the learned Additional District Munsif, Chengam on the ground that originally, the suit was filed showing subject matter of the property as 18 cents and now, by way of amendment, they are

seeking 15 cents and there are no four boundaries that have been fixed and hence, rejected the said application. As against the same, the revision petitioner has preferred the present Civil Revision Petition before this Court.

4 Heard both sides and perused the materials placed on record.

5 On a perusal of the original plaint, it is seen that the entire extent of the plaintiff's property is shown as "A" schedule, while "B" Schedule is subject matter of the property to an extent of 18 cents on the Western portion, which shows in the red colour along with the plaint plan in the revenue map. The Advocate Commissioner has filed his report indicating only 14.25 cents as encroached portion and the amendment has to be reduced from 18 to 15 cents.

6 On perusal of the proposed amendment petition, it is seen that the schedule property is shown as 15 cents on the western side and below that four boundaries are clearly mentioned in the plaint plan. Hence, the finding rendered by the learned Additional District Munsif, Chengam, is actually incorrect and

inappropriate. Furthermore, in the proposed amendment, the plaintiff was not asking for more extent of land than the original plant he has restricting his claim from 18 cents to 15 cents and the site of the alleged encroachment is also on the western side. The original plaint clearly indicates the revenue map as 18 cents on the western side and the proposed plan is also in the western side 18 cents.

7 Therefore, this Court is of the considered view that it does not alter or change the character of the suit property and accordingly, this I.A.No.238 of 2014 is allowed. However, after hearing the learned counsel for the respondent, it is clarified that the Advocate Commissioner's report can be taken only to the limited extent on noting down physical features and the same should not be considered as evidence. Because, the Advocate Commissioner cannot collect evidence.

8 In view of the above, the respondent/defendant is directed to file additional written statement, if any, within a period of three weeks from the date of hearing notice. The Trial Court is directed to frame issues within a period of three weeks from the date of receipt of a copy of this order and to dispose of the suit

within a period of twelve weeks thereafter.

9 With the above directions, the Civil Revision Petition stands allowed to the extent indicated above and the order passed by the learned Additional District Munsif, Chengam, in I.A.No.238 of 2014 in O.S.No.134 of 2012, dated 08.04.2014 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

30.01.2020

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Speaking Order:Yes/No

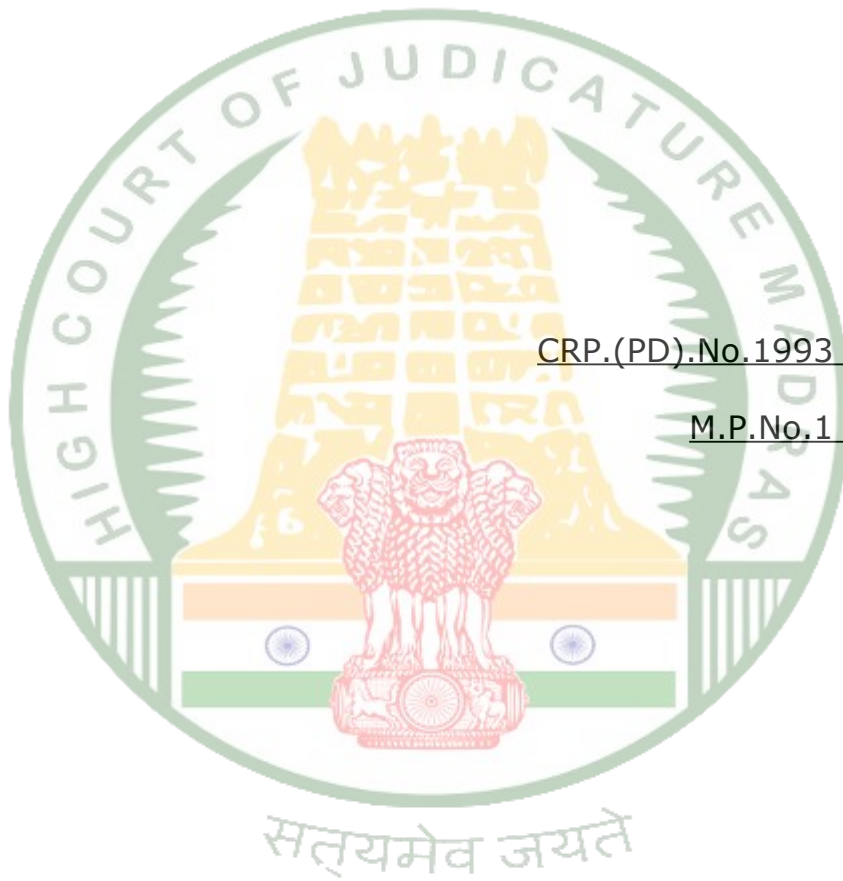
Note: The Registry is directed to issue order copy on or before 13.02.2020.

To
The Additional District Munsif, Chengam.

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RMT.TEEKAA RAMAN., J.
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