

CRP (PD) NO.113 OF 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14 / 09 / 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CRP (PD) NO.113 OF 2017

AND

CMP NO.532 OF 2017

Krishnasamy

... Petitioner

Vs.

Shanmugasundaram

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 06.10.2016 made in I.A.No.445 of 2016 in O.S.No.207 of 2014 on the file of the Principal District Munsif, Bhavani, Erode District.

For Petitioner : Mr.S.Lakshmanasamy
For Respondent : Mr.N.Manokaran

ORDER

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This Civil Revision Petition has been preferred against the dismissal of a petition filed for appointment of Advocate Commissioner.

2.The petitioner filed a suit for declaration and injunction. In the suit, the defendant filed an application for appointment of Advocate Commissioner and the same was allowed. As per the order, the Advocate Commissioner measured the suit property belonging to the plaintiff and filed a report that the area is lesser in extent. The petitioner / plaintiff filed his objections that the sketch prepared by the surveyor is wrong and without measuring the entire extent in Survey No.77/1, the portion belonging to the petitioner alone was measured. It is erroneously shown that the property was shortened due to acquisition for road. But, according to the petitioner, road falls under Survey No.77/2 and while he purchased the land, it measured 33 1/3 cents. He also filed a petition for amendment, which was allowed by the Court for including a prayer for mandatory injunction to remove the encroachment which was made by the respondent / defendant one month before the inspection by the Commissioner. Thereafter, the petitioner has preferred the above petition for appointment of Commissioner to measure entire extent under S.No.77/1.

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3.I have perused the report of the Commissioner. Obviously, there are mistakes with regard to the directions and boundaries. The measurement is made only to a part of the property in Survey No.77/1, leaving out the remaining portion. When there is an allegation of accession or encroachment, it is always conducive to measure the entire property. The wholesome measurement will assist the Court in giving a clear finding as to the existence of land over board. Otherwise, the Commissioner's report will operate as *res-judicata* for the claim of the petitioner. If at all as alleged by the petitioner / plaintiff, excess land is in possession of the defendant or in other words, he purchased larger extent of property more than what was owned by his vendor, the fact can be elicited only by appointment of Advocate Commissioner as prayed for by the petitioner.

4. Therefore, the order dated 06.10.2016 passed in I.A.No.445 of 2016 in O.S.No.207 of 2014 by the learned Principal District Munsif, Bhavani, Erode District is set aside.

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5.In fine, the Civil Revision Petition is allowed. No costs.

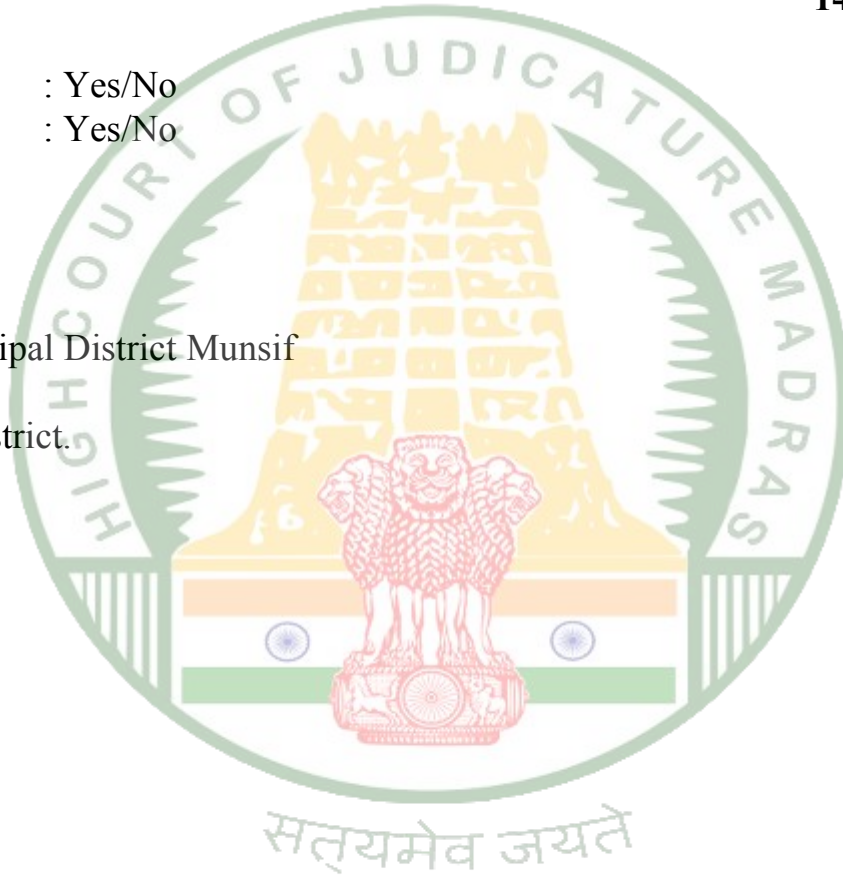
Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No
TK

To

The Principal District Munsif
Bhavani,
Erode District.



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M.GOVINDARAJ, J.

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