

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. PD 4529 of 2017
and
C.M.P. 21370 of 2017

S.Ramakrishnan

... Petitioner

Versus

C.Manoharan

... Respondent

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order passed in I.A. 235 of 2016 in O.S. 88 of 2015 dated 31.07.2017 on the file of court of Addl. District Munsif, Mayiladuthurai.

For Petitioner : Mr.A.Muthukumar

For Respondent : Mr.S.Sounthar

ORDER

This Civil Revision Petition has been filed against the order appointing advocate commissioner to measure the suit schedule property.

2. The petitioner is a sole defendant in the suit. The respondent/plaintiff has filed a suit for mandatory injunction to remove the encroachment in 'B' schedule property and also to remove the compound wall. In the above suit, the respondent/plaintiff has filed an application to appoint an advocate commissioner to measure the suit schedule property with help of Surveyor. The Trial Court has allowed the application. Challenging the same, the present Civil Revision Petition has been filed.

3. Mr. A.Muthukumar, learned counsel appearing for petitioner would contend that, the suit has been filed for a mandatory injunction and also for consequential relief. The petitioner is disputing the title of plaintiff. In the said circumstances, without maintaining the suit for declaration to declare the title over the suit property, the suit for mandatory

injunction itself is not maintainable. That apart, the petitioner/defendant is disputing the very sale deed, by which, the plaintiff has purchased the property. In the above circumstances, the property need not be measured based on the sale deed of plaintiff. The Court below, without considering the same, has mechanically allowed the application.

4. Per contra, Mr.S.Sounthar, learned counsel appearing for respondent would contend that, the plaintiff claiming right over the property by virtue of a sale deed. According to him, the defendant has encroached the portion of 'A' schedule property, and that apart, the defendant is claiming title over the 'B' schedule property by means of another document. If at all, he is having any document in his favour, it is always open to him to produce the same enabling the Advocate Commissioner to measure the property with reference to their respective sale deeds. In absence of any such sale deed in favour of defendant, the suit property should necessarily be measured based on the title deed produced by the plaintiff. Considering the above circumstances, the Trial Court has allowed the application.

5. I have heard the rival submissions of learned counsel appearing for petitioner as well as learned counsel appearing for respondent and perused the records carefully.

6. It is a suit for mandatory injunction. According to the petitioner, he has purchased the 'A' schedule property by means of registered sale deed in the year 2011. Now, the defendant, who is a neighbouring landowner alleged to have encroached the portion of 'A' schedule property. Hence, he has filed a suit, and also filed an application to appoint an advocate commissioner to measure the property with the help of surveyor to find out whether any encroachment is made by the defendant. The counter affidavit has been filed by the defendant disputing the very title of plaintiff, and contended that, without filing a suit for declaration declaring his right over the suit schedule property, the filing of the present suit for mandatory injunction itself is not maintainable, and the suit property cannot be measured based on the disputed sale deed. However, the Trial Court has allowed the application, on the ground that, since the suit is for

mandatory injunction, and the identity of the property is in dispute, the Commissioner should be necessarily appointed to measure the property with the help of Surveyor. Even though the defendant is disputing the title of plaintiff, he has not come forward to produce any document to establish his title before the trial court. Considering the said circumstances, the Trial Court has rightly allowed the application. If at all, the defendant has any valid title document, it is always open to him to produce the same before the Advocate Commissioner at the time of measuring the property. The Advocate Commissioner is directed to measure the suit property as per the warrant issued by the Trial Court with the help of Surveyor and file a report. The Advocate Commissioner is directed to measure the property within a period of four weeks from the date of receipt of the copy of this order. Thereafter, the Trial Court is directed to proceed with the trial and dispose the suit within a period of six months.

WEB COPY

7. With the above direction, the present Civil Revision Petition stands disposed of. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

11.02.2020

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rpp

To

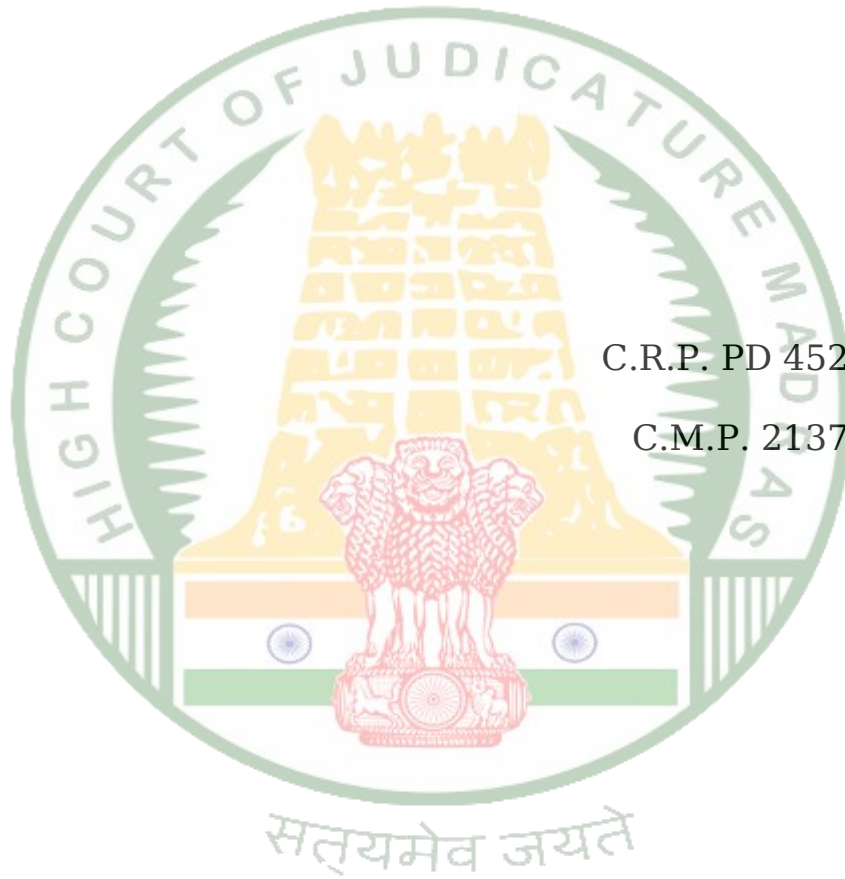
Addl. District Munsif Court,
Mayiladuthurai.



WEB COPY

V.BHARATHIDASAN,J.

rpp



C.R.P. PD 4529 of 2017
and
C.M.P. 21370 of 2017

WEB COPY 11.02.2020