

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.3009 of 2018
and
CMP.No.17437 of 2018

Amirthavalli
W/o.Jayaraman

...Petitioner/1st Defendant

Vs.

- 1.Arulmigu Soundararaja Perumal Thirukoil,
Represented by its Executive Officer,
Thirukkanapuram,
Nagapattinam Taluk & District.1st Respondent/Plaintiff
- 2.The Block Development Officer,
Thirumarugal,
Nagapattinam Taluk & District.
- 3.Thirukkanapuram Panchayat
Rep.by its Special Officer,
Nagapattinam Taluk & District.
- 4.The District Collector,
Kadambadi District Collectorate
Complex,
Nagapattinam District. ..Respondents 2 to 4/Defendants 2 to 4

Prayer: Civil Revision Petition filed under Article 227 of the Constitution India, against the fair and decreetal order dated 02.08.2018 passed by the learned District Munsif, Nagapattinam, Nagapattinam District in I.A.No.761 of 2018 in O.S.No.37 of 2013.

For Petitioner : Mr.S.Giritharan

For Respondents : Mr.M.S.Palaniswamy for R1
: Mr.Y.T.Aravind Gosh for R2 to R4
Additional Government Pleader

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order dated 02.08.2018 passed by the learned District Munsif, Nagapattinam, Nagapattinam District in I.A.No.761 of 2018 in O.S.No.37 of 2013.

2. The defendants in the suit in O.S.No.37 of 2013, a suit for recovery of possession filed by the Temple claiming that the petitioner herein has encroached upon the property of Temple have come up with this Civil Revision Petition, challenging an order appointing a Commissioner to find out the actual encroachment. The suit was laid by the Temple claiming that the suit property belongs to the Temple and that the first defendant had encroached upon the same. The first defendant is resisting the suit contending that the suit property situated in survey No.135/3 was purchased by her for valid consideration and the same does not belong to the Temple. The defendant also raised a plea that there was no encroachment and no measurement was taken before filing of the suit. It is also claimed that the measurement taken by the Temple Authority was according to their whims and fancies that cannot be relied upon.

3. During trial, after examination of witnesses the Temple filed instant application in I.A.No.761 of 2018 seeking appointment an Advocate Commissioner to measure the property to find out the exact measurement of the alleged encroachment. This application was resisted by the first defendant contending that it is belated and that the construction was put up only based upon a "No Objection Certificate" issued by the Temple.

4. The Trial Court on a consideration of the facts and circumstances concluded that in the light of the controversy regarding the presence or absence of the encroachment, it is always better if the property is measured by the Commissioner and exact encroachment is found out. The Trial Court has also found that it will be helpful to the defendant also to appoint a Commissioner to measure the property. On the said findings the Trial Court had allowed the application and appointed a Commissioner. Hence, this Revision.

5. Heard, Mr.S.Giritharan, learned counsel appearing for the petitioner, Mr.M.S.Palaniswamy, learned counsel appearing for the first respondent's Temple and Mr.Y.T.Aravind Gosh, learned Additional Government Pleader appearing for the respondents 2 to 4.

6. Mr.S.Giritharan, learned counsel appearing for the petitioner would vehemently contend that the Trial Court was not

right in appointing a Commissioner even after concluding that the location of encroachment has been specifically mentioned in the plaint itself. He would also submit that the suit being one for recovery of possession, it is for the plaintiff to prove the factum and extent of the encroachment in order to succeed.

7. Contending contra, Mr.M.S.Palaniswamy, learned counsel appearing for the first respondent/plaintiff Temple would submit that it is because of the stand taken by the defendant that the measurements were not taken and exact encroachment was not identified the Temple is forced to file an application for appointment of a Commissioner. I have considered the rival submissions by the counsel on either side.

8. The Trial Court has come to the conclusion that appointment of Commissioner would aid the Court to ascertain the exact extent and location of the encroachment. Even though the plaintiff has claimed that the particular area has been encroached, the defendant has vehemently denied such encroachment, apart from claiming that no measurement was taken by any third party and the unilateral measurement taken by the plaintiff Temple cannot be accepted. In such circumstances, the Trial Court felt the need for appointing a Commissioner to measure the property and find out the exact extent of the encroachment. A Commissioner's report is after all a form of evidence and such evidence would be necessary for the trial Court to enable to pronounce upon the issues that arise in the suit for adjudication.

11. This Court cannot interfere with such a discretion of the Trial Court particularly under Article 227 of the Constitution of India. I do not see any material irregularity or illegality in the order of the Trial Court. Hence, I do not see any merit in the Revision. This Civil Revision Petition therefore fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

dna

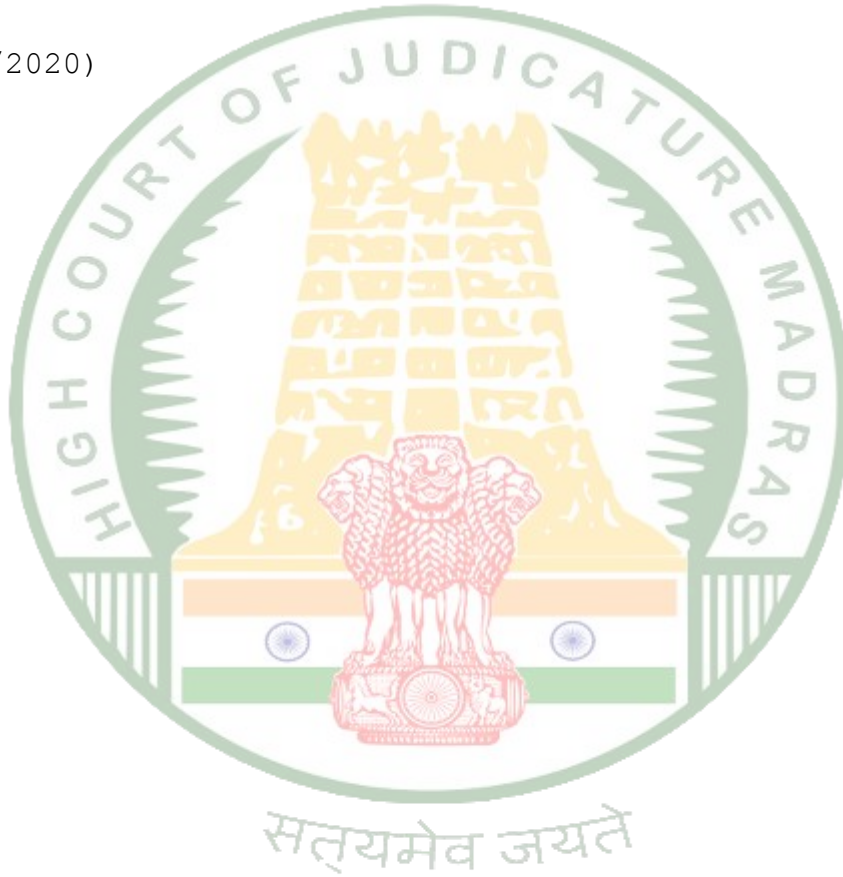
To

The District Munsif Court,
Nagapattinam District.

+1cc to Government Pleader SR.No.27788

C.R.P.No.3009 of 2018
and
CMP.No.17437 of 2018

PP (CO)
GMY (19/10/2020)



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