

C.R.P.(PD) Nos.542 and 543 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD) Nos.542 and 543 of 2021
and
C.M.P. No. 4647 of 2021

N. Nagaraj

... Petitioner
(In both petitions)

Vs.

R. Murugan

... Respondent
(In both petitions)

Prayer in C.R.P.(PD) No.542 of 2021: This Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 22.2.2019 made in I.A.No.1104 of 2017 in O.S.No.262 of 2012 on the file of the learned Vth Additional District Munsif Court, Coimbatore.

Prayer in C.R.P.(PD) No.543 of 2021: This Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and

decretal order dated 03.03.2020 made in I.A.No.2 of 2019 in O.S.No.262 of 2012 on the file of the learned Vth Additional District Munsif Court, Coimbatore.

For Petitioner ... Mr.V. Anandhamurthy

For Respondent ... No Appearance
(in Both Petitions)

COMMON ORDER

These Civil Revision Petitions have been filed to set aside the fair and decretal orders dated 22.02.2019 made in I.A.No.1104 of 2017 and 03.03.2020 made in I.A.No.2 of 2019 in O.S.No.262 of 2012 on the file of the learned Vth Additional District Munsif Court, Coimbatore.

2. The case of the petitioner is that the respondent herein is the plaintiff who had filed a suit in O.S.No.262 of 2012 seeking for permanent injunction restraining the defendant, his men, agents or anybody claiming under him from in anyway encroaching the suit property and not to put up any construction, trespass and disturbing with the plaintiff's peaceful possession of the suit property. After filing the aforesaid suit, the plaintiff/respondent herein has amended the said suit

including the relief of mandatory injunction based on the report of the Advocate Commissioner filed in I.A.No.362 of 2012. The plaintiff /respondent herein is the absolute owner of the suit property i.e., a house site No.23 is a DTP approved site. After purchasing the said suit property, the plaintiff/respondent herein is in peaceful possession and enjoyment of the same. The defendant/petitioner herein is the owner of the suit property's eastern portion land and he has been trying to put up a construction in his property. While the said suit is pending, the defendant/petitioner herein is said to have encroached into the suit property and constructed a house in the encroachment area of the suit property. The Advocate Commissioner, who was appointed by the Trial Court in I.A.No.362 of 2012, along with Taluk Surveyor filed a report pointing out that the defendant/petitioner herein has encroached into the suit property and put up a construction thereon by the defendant/petitioner herein. The construction of the defendant's building is illegal and unlawful. Therefore, the removal and demolition of the encroachment is very necessary to protect the right of the plaintiff's property. The encroachment and the construction put up thereon is liable for demolition and removal. The defendant/petitioner herein has filed a

written statement denying all the averments made in the plaint. In the written statement filed by the defendant/petitioner herein, it has been stated that the defendant's property lies on the east of the suit schedule property. The defendant/petitioner herein purchased the site No.12 measuring 2535 sq.ft., in S.F.No.383/1A by virtue of a Sale Deed dated 19.05.2010 registered as Document No.3060 of 2010 at Sub-Registrar Office, Thondamuthur. The defendant/petitioner herein obtained approval from the Town Panchayat for the construction of house over his property on 27.5.2011 and the building plan was also approved. When the defendant/petitioner herein started to put up construction, the plaintiff/respondent herein questioned the construction over the western part of the defendant's property under the guise that the portion belongs to him and the defendant/petitioner herein is encroaching the same. After that the plaintiff/respondent herein started to prevent the construction work of the defendant/petitioner herein. Further, an Additional written statement has also been filed by the defendant/petitioner herein stating that the suit property is bounded on the west by 30 ft North-South lay out road. The alleged encroachment might be on the west of the suit property and not on the east as alleged by the plaintiff/respondent herein. The

defendant/petitioner herein has put up construction over his property based on his title deed. Hence, he has not encroached the suit property. Being aggrieved by the report filed by the Advocate Commissioner in I.A. No.361 of 2012, since the Advocate Commissioner has not measured the property from the proper boundary stone and the property of the defendant/petitioner herein, the actual and exact portion of the alleged encroachment could not be ascertained. Hence, the petitioner/defendant filed a petition in I.A.No.1104 of 2017 to scrap the above commissioner's report and plan. The Court below by its order dated 02.02.2019 dismissed the aforesaid application holding that the Advocate Commissioner has already filed the report after visiting the suit property in the presence of the parties. Hence, it is not necessary to scrape the sketch and report of the Advocate Commissioner. Further, the defendant/petitioner herein also failed to establish that under what way the request for survey the suit property from the survey stone would help the court to decide the real dispute between the parties. Thereafter, the defendant/petitioner herein has filed an interlocutory application in I.A.No.2 of 2019 to appoint a fresh Advocate Commissioner to measure the suit property and the property of the defendant/petitioner herein from

the boundary stone as per the revenue records with the aid of the Taluk Surveyor and to file a report. The Trial Court, after considering the submissions on both sides, has dismissed the said petition by its order dated 03.03.2020. Being aggrieved by the aforesaid order, the defendant/petitioner herein has filed the present Civil Revision Petition to set aside the same.

3. The learned counsel appearing for the petitioner/defendant submitted that the report filed in I.A.No.362 of 2012 has to be scrapped in view of the inherent defects therein. The Advocate commissioner has not acted in conformity with the warrant, therefore, the petitioner has filed a petition in I.A. No.1104 of 2017 to scrap the report filed by the Advocate Commissioner.

4. It has been further submitted that the Trial Court has failed to note that the commissioner did not fix the location of the disputed bathroom which was the very purpose for which he was appointed. The report filed already is vague and not useful for any purpose and the trial Court has also failed to note that on the basis of the commissioner's

report, the plaintiff/respondent herein included the relief of mandatory injunction. The objections filed by the defendant/petitioner herein was not even considered and further proceedings on the basis of earlier commissioner's incomplete report is unjust. Therefore, the report has to be scrapped for reissuing the warrant.

5. The learned counsel appearing for the petitioner further submitted that the Court has appointed a Commissioner in I.A.No.361 of 2012 and he visited the property on 15.6.2012. The petitioner gave a memo of objection to the Commissioner asking him to find out the survey stones, but it was not done at request of the petitioner.

6. He further submitted that survey stones have to be fixed after identifying the boundaries as per the sale deed of the plaintiff/respondent herein and the defendant/petitioner herein. Such an exercise would help the court to have a first hand knowledge for deciding the suit in a better manner.

7. He further submitted that the Court can appoint a Commissioner to elucidate the matter in dispute and to enable the parties to have a first hand knowledge about the suit property. The report and plan would minimize the oral evidence and would help the trial Court as well as the Court of appeal to understand the nature of the property and the crux of the lis.

8. Heard, the learned counsel appearing for the petitioner as well as perused the material available on record.

9. On a perusal of the records, it is seen that the respondent/plaintiff property is a DTP approved site and the property purchased by the petitioner/respondent is an unapproved one. The Advocate Commissioner filed a report stating that the petitioner/respondent encroached a certain extent of the suit property by measuring the suit property alone. As per the Warrant of Commission issued by the trial Court, the Advocate Commissioner has inspected the suit property and measured the same with the help of the Taluk Surveyor and he cannot go beyond the same. When the trial Court had gone into

the issue of encroachment and the Advocate Commissioner was appointed to find out the extent of the suit property, it is left open to the petitioner herein to raise his objection at the time of trial and the Advocate Commissioner can be examined, if there is any discrepancy. The Trial Court to either accept the report or reject the same based on the objection raised by the defendant/petitioner herein and thereafter to decide the issue based on the materials placed before the Trial Court. Therefore, the Trial Court has rightly dismissed the I.A.No.1104 of 2017 in O.S.No.262 of 2012 and I.A.No.2 of 2019 in O.S.No.262 of 2012 on the ground that the application in I.A.No.2 of 2019 cannot be filed for the same purpose again and again without challenging the earlier order passed in I.A.No.1104 of 2017 under Article 227 of the Constitution of India. Hence, this Court finds no error committed by the Trial Court and the Civil Revision Petitions filed by the petitioner challenging the order of the Trial Court dated 22.2.2019 made in I.A.No.1104 of 2017 in O.S.No.262 of 2012 and the order dated 3.3.2020 made in I.A.No.2 of 2019 in O.S.No.262 of 2012 are hereby confirmed.

C.R.P.(PD) Nos.542 and 543 of 2021

V.BHAVANI SUBBAROYAN, J.,
lbm

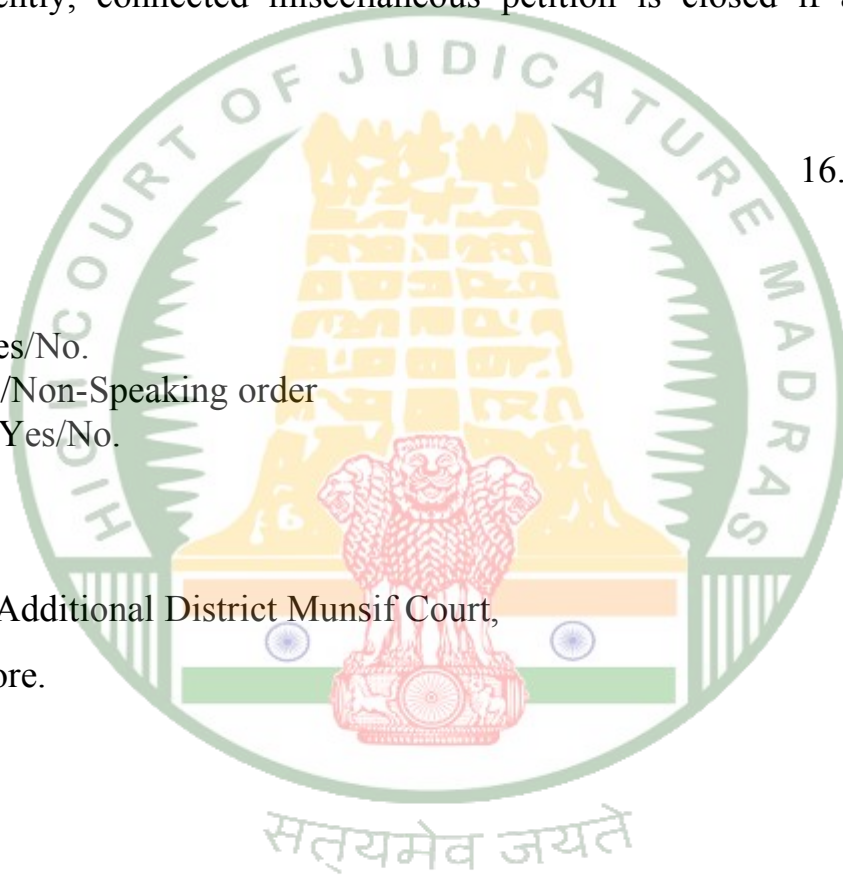
10. In the result, these Civil Revision Petitions are dismissed.

Consequently, connected miscellaneous petition is closed if any. No costs.

16.03.2021

Lbm
Index: Yes/No.
Speaking/Non-Speaking order
Internet: Yes/No.

To:
The Vth Additional District Munsif Court,
Coimbatore.



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