

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No. 4068 of 2015

and

M.P.No.1 of 2015

S.Devakumar

... Petitioner

Vs.

Sunaidha Begam

... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India praying to allow the above CRP by setting aside the fair and decretal order dated 25.03.2015 and made in I.A.No.13 of 2015 in I.A.No.308 of 2011 in O.S.No.87 of 2011 on the file of the District Munsif at Nagapattinam and to allow the above application as prayed.

For Petitioner : Mr.S.Balasubramanian

For Respondent : Mr.A.Sundaravadhanan

ORDER

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This Civil Revision Petition is arising out of the fair and decretal order passed in I.A.No.13 of 2015 in I.A.No.308 of 2011 in O.S.No.87 of 2011 dated 25.03.2015 on the file of the District Munsif, Nagapattinam,

thereby, dismissing the petition filed for an appointment of Advocate Commissioner.

2. The petitioner is the plaintiff. He filed a suit for permanent injunction and mandatory injunction to remove the construction put up by the respondent by encroaching the suit schedule property. While presenting the plaint, the petitioner also filed a petition for appointment of Advocate Commissioner in I.A.No.308 of 2011. The trial Court appointed an Advocate Commissioner to inspect the suit property and to note down the physical features and also as to the nature of the construction and to measure the construction of the suit property with the assistance of the Surveyor and file a report. After receipt of the warrant of the appointment of Advocate Commissioner, the petitioner had also paid the remuneration for the Advocate Commissioner.

3. Thereafter, the Advocate Commissioner did not inspect the property as directed by the trial Court, whereas, he returned the warrant on 09.04.2014 along with the fees received by him for the reason that he shifted his practice and he was unable to inspect the suit property. In the

meanwhile, the petitioner was examined as PW.1 and the matter was posted for cross examination of PW.1. Again, the petitioner filed a petition for appointment of Advocate Commissioner to inspect the suit property and also the property that belonged to the respondent herein in accordance with the FMB Sketch of the year 1998 with the help of the Surveyor and file a report.

4. On a perusal of the records, it reveals that initially, the Advocate Commissioner was appointed only to inspect the suit property and survey the same with the help of a Surveyor and to file a report in accordance with the sale deed dated 24.01.2001, whereas, the present petition for appointment of Advocate Commissioner is filed seeking to inspect the respondent's property and also to survey the property in accordance with the FMB Sketch of the year of 1998. Therefore, the trial Court rightly dismissed the petition for appointment of Advocate Commissioner. Initially, the appointment of Advocate Commissioner was appointed to inspect the suit property in accordance with the sale deed dated 24.01.2001 and note down the physical features and whatever the construction put up in the suit property with the help of the Surveyor.

5. Considering the above, this Civil Revision Petition is allowed and the order passed in I.A.No.13 of 2015 in I.A.No.308 of 2011 in O.S.No.87 of 2011 dated 25.03.2015 is set aside. It is made clear that the trial Court is directed to appoint an Advocate Commissioner only to inspect the suit property in accordance with the sale deed dated 24.01.2001 and to note down the physical features and also as to the nature of the construction and to measure the construction of the suit property with the help of a Surveyor. Consequently, the connected Miscellaneous Petition is closed. No costs.

21.01.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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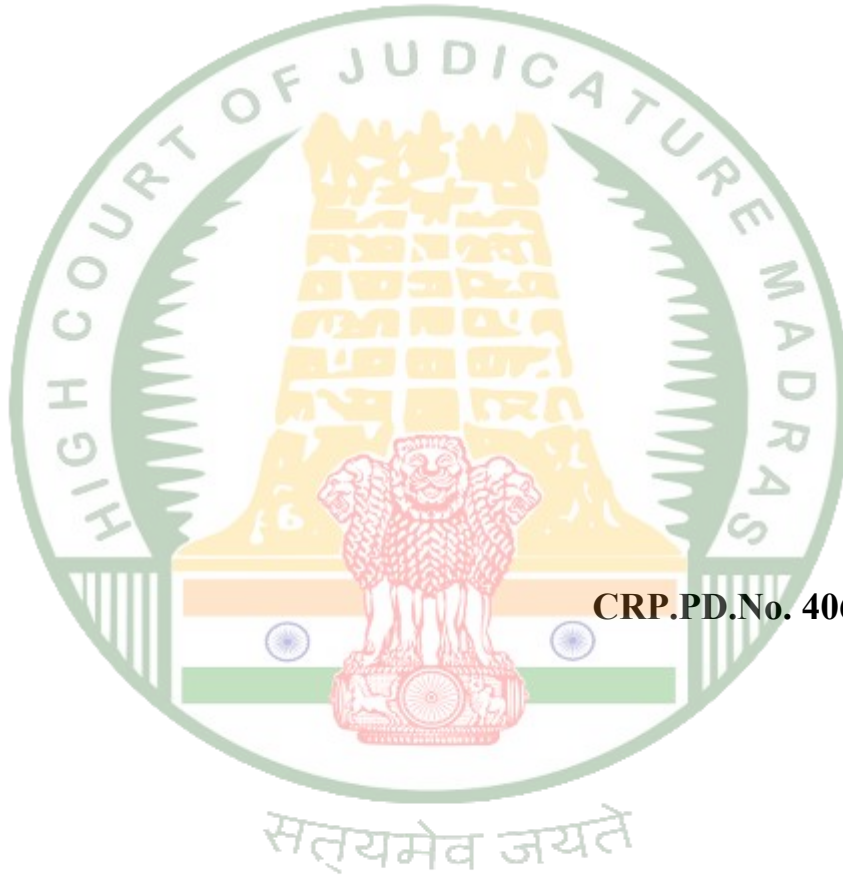
To

The District Munsif, Nagapattinam.

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G.K.ILANTHIRAIYAN,J.

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