

C.R.P.(PD) Nos.628 and 630 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD) Nos.628 and 630 of 2021
and
C.M.P. No.5383 of 2021

1. A. Karmegam,
2. K. Karunakaran,
3. S. Sugeshvarman

... Petitioners
(In both petitions)

Vs.

V. Ramadurai

... Respondent
(In both petitions)

सत्यमेव जयते

Common Prayer: These Civil Revision Petitions filed under Article 227 of the Constitution of India praying for to set aside fair and final orders dated 15.10.2019 made in I.A. No.4 of 2019 and 03.09.2020 made in I.A.No.2 of 2019 in I.A.No.635 of 2018 in O.S. No.346 of 2018 on the file of the I Additional District Munsif Court, Salem.

For Petitioners ... M/s. Zeenath Begum

For Respondent ... No Appearance
(in both petitions)

COMMON ORDER

These Civil Revision Petitions have been filed under Article 227 of the Constitution of India praying for to set aside fair and final orders dated 15.10.2019 made in I.A. No.4 of 2019 and 03.09.2020 made in I.A.No.2 of 2019 in I.A.No.635 of 2018 in O.S. No.346 of 2018 on the file of the I Additional District Munsif Court, Salem.

2. The case of the petitioners is that the petitioners herein are the plaintiffs and the respondent herein is the 1st defendant in the suit in O.S. No. 346 of 2018 which was filed by the plaintiffs on the file of the District Munsif Court, Salem, seeking for permanent injunction against the defendants by way of restraining the defendants, their men, agents and servants from interfering with the peaceful possession and enjoyment of the suit properties by way of a permanent injunction. Pending the

aforesaid suit, the plaintiffs/petitioners herein have filed I.A. No.635 of 2018 on its file seeking for interim injunction against the defendants in the suit. In the meanwhile, the 1st defendant/respondent herein has filed I.A. No.2 of 2019 seeking for to appoint an Advocate Commissioner to survey the suit schedule properties with the help of qualified surveyor and submit the report before the Court. Thereafter, the 1st defendant/respondent herein has filed I.A. No.4 of 2019 before Ist Additional District Munsif Court, Salem to amend the description of the property mentioned in I.A. No.2 of 2019. The Court below allowed the application on payment of cost of Rs.500/- to the plaintiffs/petitioners herein by order dated 15.10.2019. After the amendment of the description of the property in I.A. No.2 of 2019, the Court below has allowed the application by order dated 03.09.2020 and issued the warrant to Advocate Commissioner to inspect the petition mentioned property with the help of qualified surveyor and concerned V.A.O. and file his report and plan drawn to scale by 15.10.2020. Being aggrieved by the aforesaid orders passed by the Court below, the plaintiffs/petitioners herein have filed these Civil Revision Petitions seeking for to set aside the same.

3. The learned counsel for the petitioners would submit that the Court below exceeded the jurisdiction vested in it by allowing the applications in I.A. No.4 of 2019 and I.A.No.2 of 2019 in I.A.No.635 of 2018 in O.S.No.346 of 2018, when Item No.1 mentioned in I.A. No.2 of 2019 itself is not the subject matter of the suit, then a further application to amend the item No.1 is also not maintainable. The Court below ought to have seen that the suit filed by the plaintiffs/petitioners herein is only seeking for permanent injunction and, therefore, the burden on the plaintiffs/petitioners herein to prove their possession of the suit property.

4. It has been further submitted that the subject matter of the Commissioner application is not related to the suit property, and therefore, the 1st defendant/respondent herein cannot maintain the impugned application by way of a roving enquiry to collect the evidence. Under such circumstances, the impugned applications allowed by the Court below are not sustainable and liable to be set aside.

5. Heard, the learned counsel for the petitioners and perused the materials available on record.

6. On a perusal of the record, it is seen that while the plaintiffs/petitioners herein have filed the suit in O.S. No.346 of 2018 seeking for permanent injunction against the defendants, the 1st defendant/respondent herein has filed the I.A.No.2 of 2019 to appoint an Advocate Commissioner to survey the boundaries of the suit schedule property since the plaintiffs/petitioners herein are making attempts to encroach and annex the same with their properties. Even though the same has been denied by the plaintiffs/petitioners herein, as both parties are having their lands in one and the same survey numbers and there is dispute over the boundary of both parties and the suit schedule property is adjacent to each other, the Court below has rightly issued warrant to the Advocate Commissioner by allowing the application in I.A. No.2 of 2019 to survey the suit schedule property with the help of the qualified surveyor and V.A.O enabling to decide the issue in accordance with the report filed by the Advocate Commissioner and in accordance with law. In these circumstances, the petitioners and the respondent are having

burden to prove their right, title and interest over the suit schedule property by letting in oral and documentary evidence on visitation of the Advocate Commissioner along with Surveyor and V.A.O. Further, 1st defendant/respondent herein has filed I.A.No.4 of 2019 to amend the description of the suit schedule property mentioned in I.A.No.2 of 2019 since it was mentioned wrongly in the application. The same was allowed to avoid multiplicity of proceedings. It is admitted fact that if it is not amended in the description of the suit schedule property, it would pave the way for filing of multiple legal proceedings on same cause of action by the parties for not being mentioned the proper description in the suit schedule property and hence, the Court below has rightly allowed to amend the description of the property in I.A. No.4 of 2019. Further, the Court below has also rightly appointed an Advocate Commissioner to measure the suit property for fixation of the boundary line to put an end to the dispute arose between the parties.

7. In view of the above, this Court is not inclined to interfere with the orders passed by the Court below and they are hereby confirmed. As the dispute would be solved by inspection of the suit schedule property,

it would be appropriate on the part of the Advocate Commissioner to survey the suit schedule property as per the directions given by the Court below and file a report along with photograph before the Court below enabling the Court below to decide the matter in O.S. No.346 of 2018.

8. In the result, these Civil Revision petitions stand dismissed. Consequently, connected miscellaneous petition is closed if any. No costs.

Lbm

Index: Yes/No.

Speaking/Non-Speaking order

Internet: Yes/No.

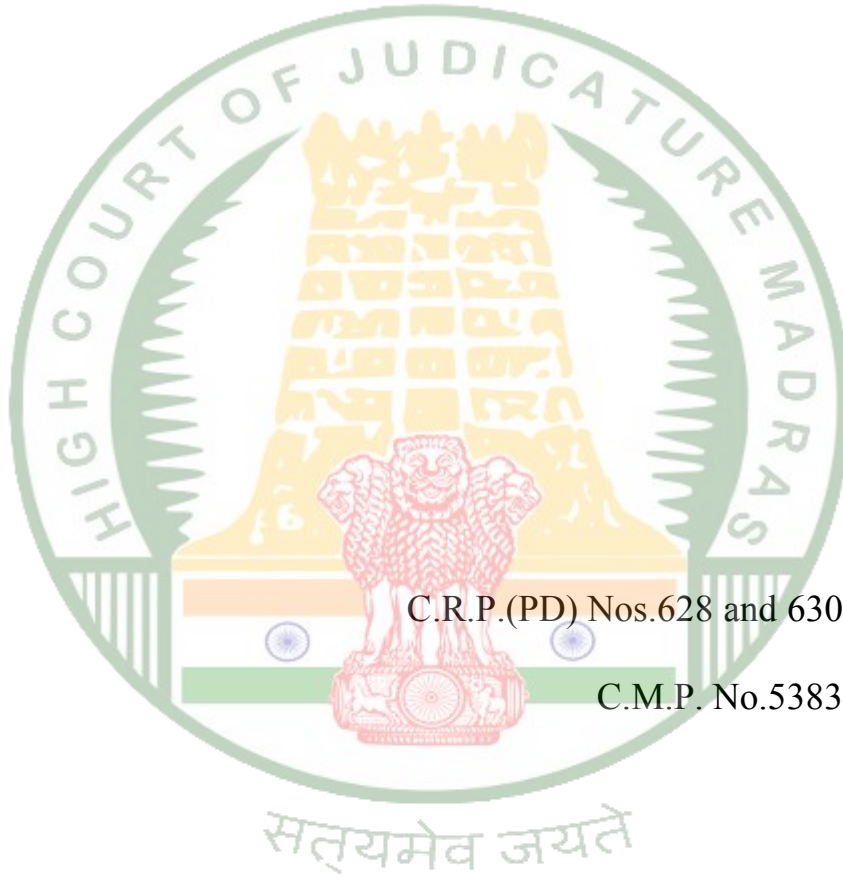
25.03.2021

To:
The I Additional District Munsif Court,
Salem.

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V.BHAVANI SUBBAROYAN, J.,
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