

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD) No.587 of 2021
and C.M.P. No.5013 of 2021

S. Vedamurthy, ... Petitioner

Vs.

D. Manoharan ... Respondent

Prayer: This Civil Revision Petition filed under Article 227 of the Constitution of India praying for to set aside the fair and decreetal order passed in I.A. No.150 of 2018 in O.S. No.53 of 2017 by the Principal Sub-ordinate Judge, Chengalpattu District dated 22.07.2019.

For Petitioner ... Mr. S. Anburaja

For Respondent ... No Appearance

ORDER

This Civil Revision Petition under Article 227 of the Constitution of India has been filed praying for to set aside the fair and decreetal order

dated 22.07.2019 passed in I.A. No.150 of 2018 in O.S. No.53 of 2017 by the Principal Sub-ordinate Judge, Chengalpattu District.

2. The case of the petitioner is that the petitioner herein is the plaintiff in O.S. No.53 of 2017 on the file of the Principal Sub-ordinate Judge, Chengalpattu. During the pendency of the suit, the petitioner has filed an I.A. No.150 of 2018 on its file praying to appoint an Advocate Commissioner to measure the suit "A" and "B" schedule properties with the help of Taluk Surveyor, to draw a plan and to file his report with Surveyor's Report. After perusing oral and documentary evidence, the Court below dismissed the aforesaid application by its order dated 22.07.2019. Being aggrieved by the aforesaid order, the petitioner has filed the present Civil Revision Petition seeking for to set aside the dismissal order.

3. The learned counsel for the petitioner would submit that the Court below ought to have seen that based on the title and possession of the vendors ie. Mr. Venkataraman and Mr. Gopal, notice under Section 9(2) of the Survey and Boundaries Act was issued during 1996-1997 and

later Gramanatham Patta No.332 was granted to them in respect of 207 Sq. Mtr. and New Gramanatham S. No.395/22 was assigned. At the same time, the Sale deed dated 19.02.1998 has been executed in favour of the petitioner herein with regard to the said suit property wherein the extend of the property has been mentioned as 1500 Sq. Ft. instead of 207 Sq.Mtr. ie. 2228 Sq. Ft. It will come to the light after measuring the four boundaries. No piece of land has been left out in S. No.395/22, as per the said recital.

4. It has been further submitted that the petitioner and one Mrs. Vijaya have exchanged their property bearing old Gramanatham Survey No.150/7A2 (Part), New Gramanatham S.No.395/23 to an extent of 250 Sq. Mtr was owned by said Mrs.Vijaya under exchange deed dated 09.04.2008 registered as Document No.630 of 2008 in the office of Joint-I Sub Registrar, Chengalpattu in which the property of an extent of 1679 Sq.ft out of 250 Sq.Mtr in Old Gramanatham S.No.150/7A2 (Part) correlated to New Gramanatham S.No.395/23 was allotted to the petitioner with specific boundaries and measurement. Later the said extent has been separately sub-divided as S.No.395/23A and Patta No.85

has been granted to the petitioner. However, the remaining extent of 115 Sq.Mtr in S.No.395/22 for which patta No.322 was granted to the petitioner. Further the Court below failed to note that the defendant/respondent herein illegally encroached a portion of an extent of 261 Sq. Mtr out of 115 Sq.Mtr in Survey No.395/22A, measuring East to West on the Northern side 3-1/2 Sq.ft, Southern side by 2-1/2 Sq.Ft., North to South on both sides 87 Sq.ft., while the defendant has no right, title or interest over the suit property in Survey No.395/22A. While that being so, the defendant is claiming only survey No.395/21, the defendant had trespassed into the suit property in S.No.395/22A. Hence, only point to be determined is the defendant has trespassed in the suit property belonged to his suit property in S.No.395/1 or belonged to the petitioner's suit property in S.No.395/22A. Without considering the aforesaid aspects, the Court below has dismissed the application which has been filed to appoint an Advocate Commissioner to measure the suit property encroached by the defendant.

5. Heard, the learned Counsel for the petitioner and perused the material available on record.

6. On a perusal of the records, it is seen that the petitioner/plaintiff has filed the suit in O.S. No.53 of 2017 before the Trial Court for recovery of possession wherein it has been stated that the defendant/respondent herein had encroached the suit property in Survey No.395/22A. In the meanwhile, the plaintiff/petitioner herein has filed I.A. No.150 of 2018 seeking for to appoint an Advocate Commissioner to inspect the suit schedule property in Survey No. 395/22A belonged to the petitioner and in Survey No.395/21 since it had been stated that the defendant/respondent herein has encroached the suit property belonged to the petitioner in Survey No.395/22A. While that being so, the petitioner is claiming the suit schedule property relying upon the Sale Deed dated 19.02.1998, and he accepts himself in the petition that the recital of the Sale deed dated 19.02.1998 with regard to the extent of the suit property is wrongly mentioned as 1500 Sq. Ft. instead of 2228 Sq. Ft., the petitioner can claim his right, title or interest over the suit property as per the Sale Deed. If it is extent of the suit property is wrongly mentioned, the petitioner can approach the concerned Sub-Registrar Office, for rectification of the Sale Deed. After rectification of the Sale Deed to the extent of 2228 Sq. Ft in the suit schedule property,

the petitioner can approach the appropriate Forum for his relief. Apart from that the petitioner cannot seek to appoint an Advocate Commissioner to measure the suit property to know the boundaries of the suit properties for the purpose of the petitioner. Hence, this Court is not inclined to interfere with the order passed by the Court below and it is hereby confirmed.

7. In the result, the Civil Revision petition stands dismissed. Consequently, connected miscellaneous petition is closed if any. There shall be no order as to costs.

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Msm

Index: Yes/No.

Speaking/Non-Speaking order

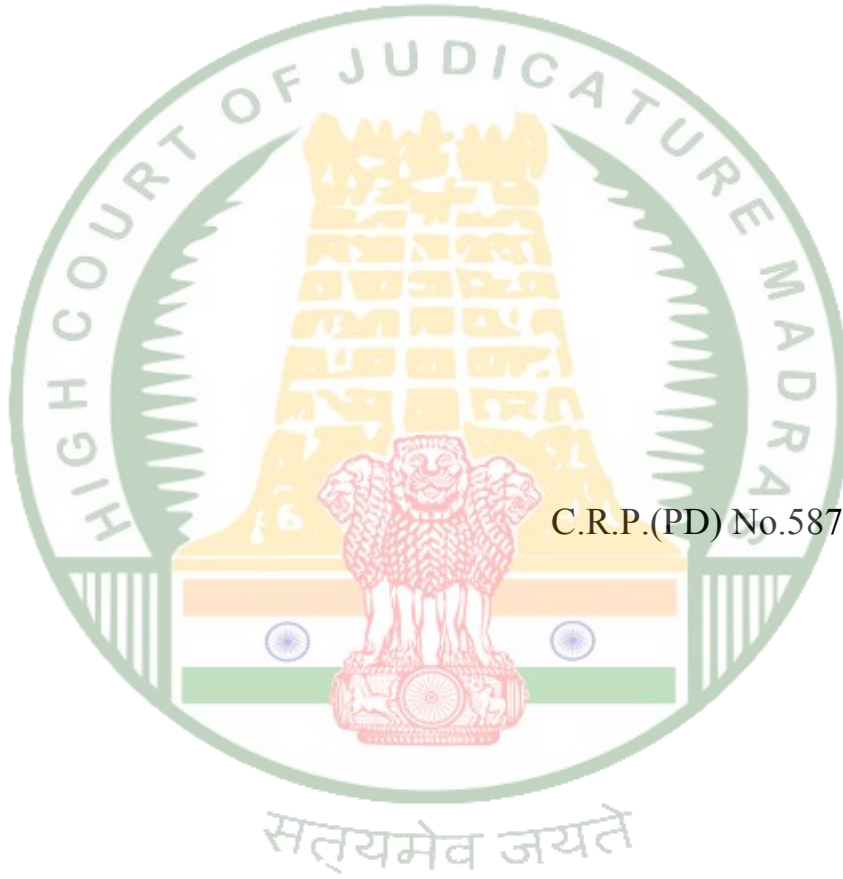
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