



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP(PD) No.2738 of 2016

in

CMP.No.14089 of 2016

S.Umarani  
W/o.C.Shanmugam

... Petitioner/1<sup>st</sup> Respondent/1<sup>st</sup> Defendant

Vs.

1.M.Shanmugam  
S/o.Late.C.Murugesan

2.R.Saminathan  
S/o.Ramalinga Mudaliar

3.N.Ayyavu  
S/o.Nanjappa Mudaliar

... Respondents 1 to 3/Petitioners/Plaintiffs

4.E.K.Palanisamy  
S/o.Kumarasamy

5.Umasankar  
S/o.Late P.Easwaran

...Respondents 4 & 5/Respondent 2 & 3/Defendants 2 & 3

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the Fair and Final Order dated 14.07.2016 in I.A.No.519 of 2016 in O.S.No.709 of 2015 on the file of Principal District Munsif Court, Erode and allow the Civil Revision Petition.

|                        |                          |
|------------------------|--------------------------|
| For Petitioner         | : Mr.Kaithamalai Kumaran |
| For Respondents 1 to 3 | : Mrs.Zeenath Begam      |
| For Respondent- 4      | : Mr.D.Gopal             |
| For Respondent- 5      | : NA                     |

O R D E R

(This case has been heard through video conference)

This revision petition has been filed against the order dated 14.07.2016 in I.A.No.519 of 2016 in O.S.No.709 of 2015 on

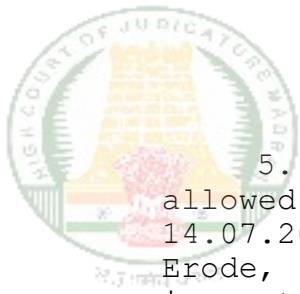


the file of Principal District Munsif Court, Erode, appointing a Commissioner to inspect the property at R.S.No.430/2,3,4 (Old Survey No.490-A), Erode Village, to find out the encroachment and to fix the boundaries with the help of Surveyor and VAO and to file his report with plan noting down the encroachment of the said fields.

2. The learned Counsel for the petitioner would submit that the petitioner is the first defendant in O.S.No.709 of 2015 and first respondent in I.A.No.519 of 2016. The plaintiffs had filed the suit seeking to declare the property in R.S.No.430/3 (Old S.No.490-A) of Erode Village (Plaint 'A' schedule property) as measuring 86 cents belongs to the plaintiffs absolutely and they had also come out with another prayer to direct measurements of R.S.No.430/2,3,4 (Old S.No.490-A) of Erode Village and fix boundaries of those fields and to find out the actual encroachment by the defendants in R.S.No.430/3 belonging to the plaintiffs. While the main prayer in the suit itself was to find out the alleged encroachment by the defendants and to fix boundaries, the respondents 1 to 3 /plaintiffs, have filed a petition for appointment of Commissioner with the very same prayer which would amount to seeking for a final order in the guise of an interim order. It is a settled law that the interim prayer and the main prayer cannot go together and the interim order of appointment of Commissioner cannot be given effect to the benefit of the plaintiffs to collect evidence and thereby, the trial Court erred in allowing the prayer. The learned Counsel would further submit that even in the schedule nothing had been stated about the area or measurement with regard to alleged encroachment. Now by way of appointment Advocate Commissioner, the respondents / plaintiffs cannot be allowed to make out a case favouring them.

3. At this juncture, the learned counsel for the respondents/plaintiffs would submit that though larger relief is sought for to find out the area of encroachment and fix boundaries, now the respondents are prepared to limit their prayer only to the extent of measuring R.S.No.430/2,3,4 ( Old S.No.490-A) Erode Village and filing a report and the respondents/plaintiffs may be permitted to let in evidence with regard to the encroachment during the course of trial Court.

4. It is settled law that interim relief which amounts to final relief which could have been granted at the time of final determination of the case, cannot be granted. However, now since the respondent has limited the relief to the extent of measuring the property in R.S.No.430/2,3,4 ( Old S.No.490-A) Erode Village, this Court is of the opinion that the direction of the trial Court to file a report with regard to the encroachment can be set aside.



5. In view of the above, the revision stands partly allowed. Paragraph 9 of the order in I.A.No.519 of 2016 dated 14.07.2016 passed by the Principal District Munsif Court, Erode, is modified to the effect that the Commissioner shall inspect the schedule property in R.S.No.430/2,3,4 ( Old S.No.490-A) Erode Village and measure it with the help of the qualified Surveyor and file a report before the Court. The direction to file the report with regard to the encroachment is set aside. The trial Court in consultation with the Counsels, fix a date at the earliest for the Commissioner to conduct inspection.

6. With the above modifications, this Civil Revision Petition is partly allowed. Consequently, connected Miscellaneous Petition is closed. No Costs.

s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Principal District Munsif Court,  
Erode

+1 CC to Mr.S. Kaithamalai Kumaran, Advocate sr 27901.

+1 CC to M/s. Zeenath Begam, Advocate sr 27930.

+1 CC to Mr.D. Gopal, Advocate sr 27805.

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JPL(CO)  
SP(15/07/2021)