

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.3591 of 2016
and C.M.P.No.18293 of 2016

S.K.Moorthy

...Petitioner

Vs

Thiagarajan

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order of the Principal District Munsif court, Mayiladuturai, dated 21.04.2016 made in I.A.No.470 of 2015 in O.S.No.251 of 2013.

For Petitioner : Mr.S.Sounthar

For Respondent : Mr.R.Shivakumar for
M/s K.M.Vijayan and Associates

ORDER

The Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.470 of 2015 in O.S.No.251 of 2013 dated

21.04.2016 on the file of the Principal District Munsif court, Mayiladuturai, thereby dismissed the petition filed by the petitioner for re-issuance of warrant of the surveyor.

2.The respondent is the plaintiff, he filed the suit for permanent injunction in respect of the suit property as against the petitioner herein. The respondent averred in the plaint that he purchased the suit property by the registered sale deed dated 05.03.1984 and he is entitled to enjoy the southern compound wall connected with the suit wall as shown in the plaint. Accordingly, the respondent constructed terraced house and he was residing there. In the house, the wooden beams are rested on the suit wall of 2 1/2 feet and also he constructed bath room and toilet attached with southern compound wall. Now, the petitioner proposed to construct the new terraced house in the vacant site. Therefore, he is trying to encroach southern wall of the respondent, as if he is the owner of the said wall. While pending the suit, the respondent filed the petition for appointment of Advocate Commissioner with the help of the Surveyor to measure the suit property. Accordingly, the Advocate Commissioner with the help of the Surveyor measured the suit property and filed the report.

3. On receipt of the report, the petitioner filed his objection that the Surveyor did not measure the property from the survey stone fixed in the ground and also not as per the document produced by the petitioner herein. Therefore, he filed a petition for re-issuance of warrant to the Surveyor for re-survey the suit property. Further alleged that the Surveyor measured the property in accordance with the FMB and as such he could not find out the property where it is actually situated.

4. The Court below dismissed the said petition for the reason that the petition belatedly filed, only to drag the proceedings. The learned counsel for the petitioner would submit that if the Surveyor surveyed the property from the survey stone fixed in the ground, the original measurement and in accordance with the documents, it would be benefit for both. According to the petitioner the wall claimed by the respondent is situated in the plot owned by the petitioner herein. The disputed wall situated in the northern side of the petitioners property.

5. Considering the above the order passed by the learned Principal District Munsif, Mayiladuturai, in I.A.No.470 of 2015 in O.S.No.251 of 2013 dated 21.04.2016 is set aside. The Court below is directed to re-issue

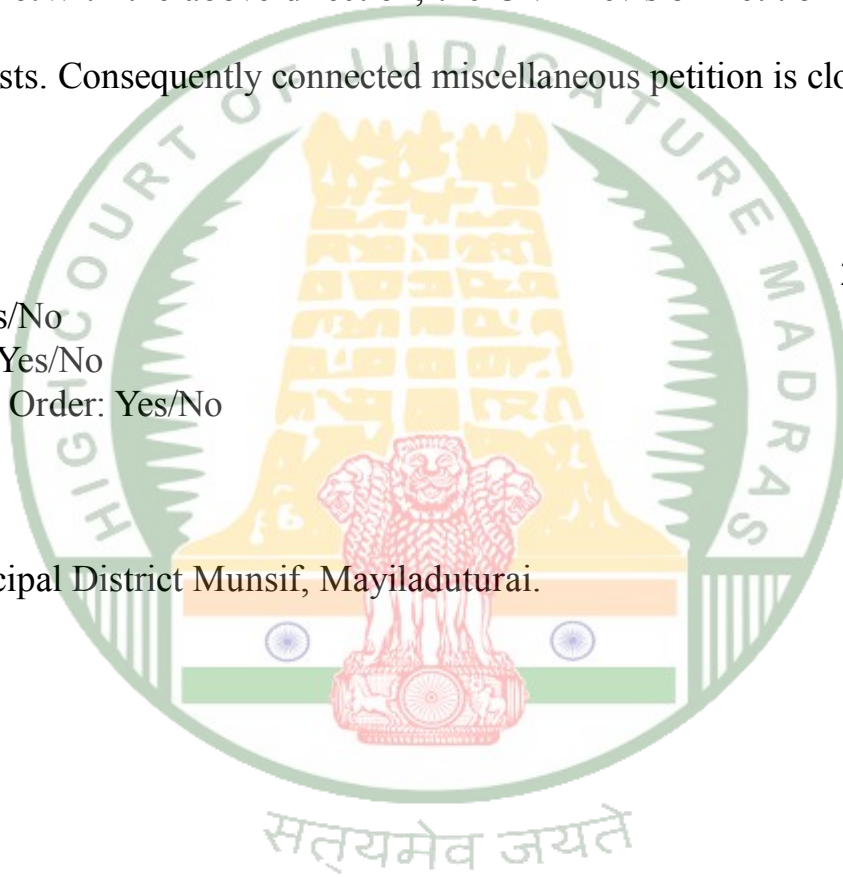
the warrant to the Surveyor to survey the suit property in accordance with the documents produced by the petitioner as well as the respondent and survey the suit property from the survey stone fixed in the property.

6. With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

22.01.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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To
The Principal District Munsif, Mayiladuturai.



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C.R.P.(P.D).No.3591 of 2015

G.K.ILANTHIRAIYAN.J,

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C.R.P.(P.D).No.3591 of 2016

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