

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(PD)Nos.2570 & 3846 of 2018  
and C.M.P.Nos.15506, 19226 & 21416 of 2018

J.Saravanan

... Petitioner in both C.R.Ps

Vs

M.Munusamy

... Respondent in both C.R.Ps

**Prayer in C.R.P.(PD) No.2570 of 2018** Civil Revision Petition filed under Article 227 of Constitution of India, prayed to allow the civil revision petition and set aside the petition and order dated 27.07.2018 and 27.09.2018 made in I.A.No.524 of 2017 in O.S.No.198 of 2017 on the file of the Subordinate Judge, Arakkonam.

(Added vide order dated 12.11.2018 made in C.M.P.No.19223 of 2018 in C.R.P.No.2570 of 2018)

**Prayer in C.R.P.(PD) No.3846 of 2018** Civil Revision Petition filed under Article 227 of Constitution of India, prayed to allow the civil revision petition and strike off the Plaint in O.S.No.198 of 2017 from the file of the Subordinate Judge, Arokkonam.

**(In both C.R.Ps)**

For Petitioner : Mr.G.Jeremiah

For Respondent : Mr.S.Vijayanand

**COMMON ORDER**

C.R.P.No.2570 of 2018 has been filed by the petitioner/defendant challenging the order dated 27.07.2018 and 27.09.2018 made in I.A.No.524 of 2017 in O.S.No.198 of 2017 on the file of the Subordinate Judge, Arakkonam.

C.R.P.No.3846 of 2018 has been filed by the petitioner/defendant to strike off the plaint in O.S.No.198 of 2017 on the file of the Subordinate Judge, Arakkonam on the ground that, while filing the suit the respondent/plaintiff has not mentioned that the petitioner's property situated in the eastern side of the suit schedule property.

2.The gist of the case is that initially the Advocate Commissioner viz., M.P.Jeyaraj (Enrolment No.33/09) was appointed by the Court below on 14.12.2017 to note down the physical features and measure the suit schedule property. The said Advocate Commissioner filed an interim report on 21.12.2018, thereafter, he filed the final report on 26.02.2018 and objection for

the final report was also filed on behalf of the respondent/plaintiff. Thereafter, the matter was listed from time to time and no objection was filed on the part of the petitioner/defendant. After the receipt of the objection from the plaintiff and on perusal of the same, the Court below thought that vide order dated 14.12.2017, the Advocate Commissioner was appointed without appointing the Taluk Surveyor. Therefore, the Court below re-issued the warrant of commissioner to measure the property with the assistance of the Taluk Surveyor. Hence, C.R.P.No.2570 of 2018, filed against the appointment of Advocate Commissioner.

3.The learned counsel for the Revision Petitioner submitted that without scraping the final report filed by the Advocate commissioner dated 28.04.2018, the Court below ought not to have re-issued the warrant of commissioner to measure the property with the assistance of the Taluk Surveyor. There could not be another report which would leave open the possibility of conflicting the earlier report being filed before the Court below.

4.The learned counsel for the respondent fairly submitted that he has no objection in scraping the final report dated 28.04.2018 and the learned counsel for the petitioner also fairly submitted that the final report of the Advocate Commissioner dated 28.04.2008 may be scraped.

5.In view of the above submission, this Court scrap the Advocate Commissioner report dated 28.04.2018 and permit the Advocate Commissioner to proceed further with the order of the Court below dated 27.07.2018. Further, as per the order passed by the Court below the Advocate Commissioner is directed to measure the property with the aid of the Taluk Surveyor and file a report within a period of two months from the date or receipt of a copy of this order. Accordingly, the C.R.P.No.2570 of 2018 is disposed of.

6.The main grievance in C.R.P.No.3846 of 2018 is that the respondent/plaintiff has not mentioned that the petitioner's/defendant's property situated in the eastern side of the suit schedule property and therefore, the plaint has to be struck off.

7.On perusal of the description given by the plaintiff, it appears that the plaintiff has provided proper description of the property but as stated by the learned counsel for the petitioner/defendant, instead of Saravanan, one Thangavel name has been mentioned as the owner of the property. This fact is admitted by the learned counsel for the respondent/plaintiff and he also admitted that the name of the previous owner was stated in the description and the Advocate Commissioner shall be directed to collect all the sale deeds from both the parties and furnish the details about the ownership of both the parties and persons who are in possession at the eastern side of the property.

8.In view of the above, this Court feels that the Advocate Commissioner shall collect all the sale deeds from both the parties and furnish the details about the ownership of both the parties and persons who are in possession at the eastern side of the property. In view of the above finding the C.R.P.No.3846 of 2018 is liable to be dismissed.

9. Accordingly, C.R.P.No.3846 of 2018 is dismissed and C.R.P.No.2570 of 2018 is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

25.01.2021

Index: Yes/No  
Speaking order/Non-speaking order

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To:

The Subordinate Judge,  
Arakkonam.



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**KRISHNAN RAMASAMY**

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