

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.08.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) No.1452 of 2020

and C.M.P. No.8366 of 2020

Subramaniam

... Petitioner

Vs.

1.Meenachi Ammal
2.Sakthi
3.Kasthuri
4.Shanmugavadivu
5.Modachur Village Panchayat
rep. by its President,
Modachur,
Gobichettipalayam Taluk,
Erode District.

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 30.09.2019 made in I.A. No.323 of 2018 in I.A. No.266 of 2008 in O.S. No.71 of 2008 on the file of the Ld. District Munsif Court, Gobichettipalayam, by allowing this Civil Revision Petition.

For Petitioner

: Mr. N.Manokaran

For Respondents 1-4

: Mr. Deepak Kumar

for Mr. V.P.K. Gowtham

O R D E R

This petition is filed to set aside the order passed in I.A. No.323 of 2018 in I.A. No.266 of 208 in O.S. No.71 of 2008, on the file of the District Munsif Court, Gobichettialayam.

2. I.A. No.266 of 2008 was filed under Order 26 Rule 9 CPC praying to appoint Advocate Commissioner to note down the physical features of the suit property, measure the suit property on the basis of sale deed of the petitioner and fix the boundary between the suit property and the property of the respondents 1 to 4, with the help of Surveyor and to file a report along with the plain.

3. Learned counsel for the petitioner submitted that in accordance with the prayer sought, the lower Court was pleased to appoint an Advocate Commissioner with a direction to note down the physical features of the suit property, measure the suit property on the basis of sale deed of the petitioner and fix the boundary between the suit property and the properties of respondents 1 to 4 with the help of Surveyor. However, the Advocate Commissioner has not measured the suit property with the help of petitioner's sale deed. It is seen from his report that he measured the property with the help

of revenue records and also the partition deed of the respondents. This is contrary to the direction issued by the Court. Therefore, the I.A. No.323 of 2018 was filed under Section 151 CPC with a prayer to reopen I.A. No.266 of 2008 and to give direction to the Advocate Commissioner to measure the suit property with the help of sale deed of the petitioner, fix the boundary between the suit property and property of the respondents and to file a report along with the plaint. However, without considering the merits of the petitioner's case, the learned trial Judge dismissed the petition. Against the said dismissal, this civil revision is preferred.

4. Learned counsel for the respondents opposed this petition on the ground that the property is measured on the basis of revenue records and the partition deed of the respondents. The trial in this case is over and the matter is pending for argument. This present petition is filed only to protract the proceedings. Therefore, he prays to confirm the order of learned District Munsif, Gobichettipalayam and dismiss this civil revision petition.

5. As narrated above, the petitioner had filed I.A. No.266 of 2008 with a specific prayer to appoint Advocate Commissioner to note down the physical features of the suit property, measure the suit property on the basis of sale deed

of the petitioner and fix the boundary between the suit property and the property of respondents 1 to 4 with the help of Surveyor. The Advocate commissioner filed his report on 26.02.2009. A perusal of the commissioner's report shows that the Commissioner measured the property on the basis of Revenue records. The petitioner filed an objection to this report on 23.04.2009, specifically stating that the Advocate Commissioner has not measured the property with the help of measurements given in the sale deed of the petitioner and the Commissioner has not fixed the boundary between the suit property and the property of the respondents.

6. In response to the objections raised by the petitioner, the Commissioner filed an additional report dated 28.07.2011, wherein he admitted that he was directed to inspect the suit property with the help of measurements given in the sale deed of the petitioner and there is no direction to measure the properties on the basis of partition deed of the respondents. It is also stated that respondents 1 to 4 have not given any memo of instruction at the time of inspection. The Advocate Commissioner was also examined as witness C.W.1. During the course of examination, he admitted that he was directed to measure the property with the help of sale deed of the petitioner and fix the boundary between the suit property and the respondents' property. Thus it is clear from

the elucidation of the aforesaid facts that the Advocate Commissioner has not followed the direction given by the Court and its warrant for measuring the property with the help of sale deed of the petitioner to fix the boundary between the suit property and the property of the respondents. However, the learned Judge, without considering this particular lapse on the part of the Commissioner, dismissed the petition. True it is that the case is pending for arguments. Merely because the case is pending for argument, the genuine request of the petitioner which was raised even at the time of filing petition in I.A. No.266 of 2008, that the suit property should be measured with the help of sale deed of the petitioner, for resolving the real issue in controversy between the parties, cannot be rejected.

7. In this view of the matter, the order passed by the learned District Munsif Court, Gobichettipalayam, in I.A. No.323 of 2018 in I.A. No.266 of 2008 in O.S. No.71 of 2008, dated 30.09.2019, hereby is set aside. The learned District Munsif, Gobichettipalayam, is directed to reopen the petition in I.A. No.266 of 2008, and reissue warrant to the Advocate Commissioner, to measure the suit property with the help of sale deed of the petitioner, fix the boundary between the suit property and property of the respondents and file a report along with the plain.

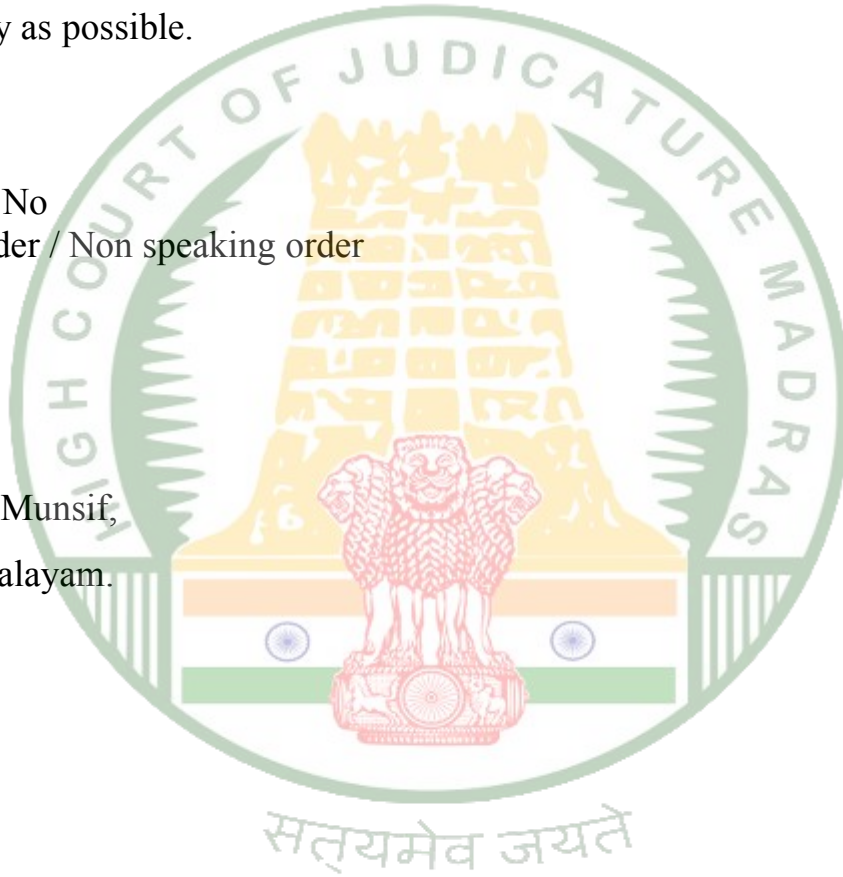
8. Accordingly, this civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed. The learned District Munsif, Gobichettipalayam, is directed to take expeditious steps to reissue warrant to the Advocate Commissioner and dispose of the case as expeditiously as possible.

12.08.2021

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

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The District Munsif,
Gobichettipalayam.



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G.CHANDRASEKHARAN. J.,

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