

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2021

C O R A M

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

C.R.P.(NPD).No.962 of 2018
and C.M.P.No.5175 of 2018

M.Gajendiran

...Petitioner

Vs

M.K.Sathyamoorthi

... Respondent

Prayer Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, prayed to set aside the order and decree dated 13.02.2018 passed in E.A.No.2 of 2018 in E.P.No.86 of 2011 in O.S.No.329 of 1996 on the file of the District Munsif Court, Gudiyatham.

For Petitioner : Mr.D.Rajagopal

For Respondents : Mr.V.Manoharan

ORDER

This Civil Revision Petition has been filed against the order dated 13.02.2018 made in E.A.No.2 of 2018 in E.P.No.86 of 2011 in O.S.No.329 of 1996 on the file of the District Munsif Court, Gudiyatham.

2.E.A.No.2 of 2018 was filed under Order 21 Rule 106 r/w 151 CPC was filed by the petitioner/defendant to set aside the exparte order dated 17.01.2018 in E.P.86 of 2011. The main grievance of the petitioner is that on 17.01.2018, the learned Counsel was not present due to the Advocate Boycott and on that day an exparte order came to be passed in the said E.P. Immediately, the petitioner filed an application on 18.01.2018 to set aside the exparte order dated 17.01.2018. However, the Court after hearing the learned counsel for the respondent/appellant dismissed the application stating that order dated 17.01.2018 is a detailed order passed after considering all the relevant documents. Therefore, he preferred the present Civil Revision Petition.

3.The learned counsel for the petitioner submitted that the petitioner was one of the party in the final decree proceedings and he has to be allowed to make his objections, as he wants to make his submission with regard to the encroachment made in his land. Due to the exparte order he was not able to make any submission in this regard. Therefore, he prayed for set aside the order passed by the Court below.

4.Per contra, the learned counsel for the respondent/appellant submitted that this petitioner was one of the party to the final decree. He was one of the purchaser, he has also made an objection in the final hearing proceedings and the Trial Court in a detailed manner and an order was passed by rejecting their objection therefore, there is nothing for the revision petitioner to make any further submission as stated before this Court. In fact he is only a formal party for the EP proceedings. Further he contended that the only issue raised by the petitioner is the five cents of land was encroached by the respondent. Therefore he wants to appoint a surveyor at the time of handing over the land.

5.In reply the learned counsel for the petitioner submitted that since the petitioner was set exparte, he lost his opportunity to make the submission before the Court below to appoint Surveyor at the time of handing over the possession.

6.Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

7.The Revision Petitioner is one of the party to the final decree proceedings. Though he is not entitled to any share in the suit schedule property he was impleaded as a party to the proceedings since he is one of the purchaser of the suit schedule property. The petitioner has raised his objection before the Court below and the Trial Court and the same was considered in the final decree proceedings. Once again the petitioner wants to make the same objection before the Court below.

8.According to the respondent, the petitioner filed an application and made his submission and the same was dismissed by the Court below. Therefore, he preferred a Civil Miscellaneous Appeal and the same was also dismissed. The petitioner knowing all the facts, now disputing that the five cents of land has been encroached by the respondent by virtue of partition in the suit schedule property.

9.In the present case, the Court was directed to handover the suit schedule property in the presence of the Village Administrative Officer and certainly the Village Administrative Officer does not identified the land with

the encroachment as stated by the Revision Petitioner. Therefore, this Court is of the opinion that the Revision Petitioner need not apprehend with the property of around five cents, the Village Administrative Officer will measure the property and handover the same and if any encroachment is there, the Revision Petitioner shall workout his remedy before the appropriate Court.

10.In view of the above, this Court find that there is no merits in the submission of the petitioner and also do not find any infirmity in the order passed by the Court below.

11.Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.02.2021

Index: Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

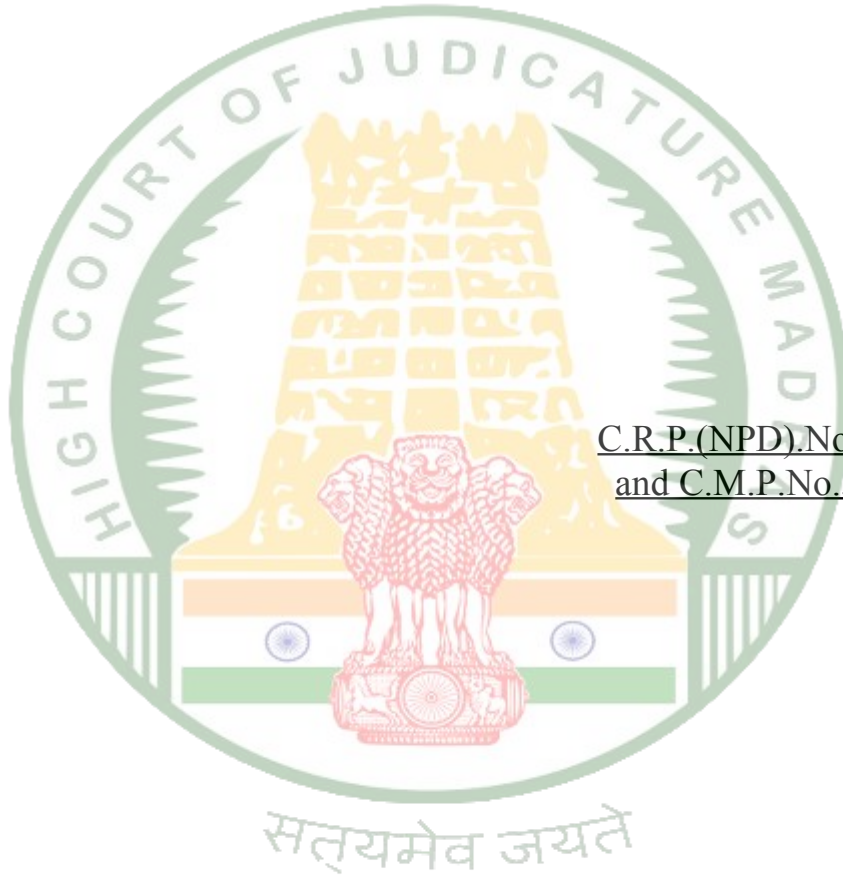
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To:

The District Munsif Court, Gudiyatham.

KRISHNAN RAMASAMY,J.

rst



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