

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(N.P.D) No.2038 of 2021

P.Balaraman

...Petitioner

Vs.

1.Pownabai

2.Bhakthavachalam

...Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decretal order in I.A.No.439 of 2020 in O.S.No.1335 of 2008 dated 07.12.2020, on the file of the District Munsif Cum Judicial Magistrate at Sriperumbudur and thereby direct the Trial Court to record the compromise memo and decree the suit in terms of compromise memo.

For Petitioner : Mr.P.Vasanth
For Respondents : Mr.T.Sundaravadanam

ORDER

This Civil Revision Petition is filed challenging the order passed in I.A.No.439 of 2020 in O.S.No.1335 of 2008 dated 07.12.2020 by the learned

District Munsif Cum Judicial Magistrate, Sriperumbudur.

2.The learned counsel for the petitioner submitted that the petitioner filed a suit in O.S.No.1335 of 2008 claiming the relief of permanent injunction against the respondents in respect of the suit property. The suit property is the vacant site, measuring 0.8½ cents in S.No.219/5 in Malaipattu Village, Padappai Firka, Sriperumbudur Taluk with a damaged and dilapidated house thereon, bearing Door No.5, Ramadoss Street, (Road Street), bounded on the North by Rajappa Naicker's property, South by Street, West by property belonging to Arumugam and East by property belonging to Munusamy. The respondents entered appearance and contested the claim of the petitioner by stating that the respondents purchased the suit property in a court auction sale. Subsequently, both the parties have settled dispute. In terms of the compromise a memorandum of compromise was entered into between both the parties in which, the petitioner and the respondents mutually agreed to divide the suit property into two parts and allot 3½ cents on the northern side to the respondents/defendants and 5cents on the southern side to the petitioner/plaintiff. A rough sketch is also attached with the compromise memo. Then the petitioner filed a petition in I.A.No.439 of 2020 under Order XXIII

and Rule 3 of C.P.C., along with the compromise memorandum, rough sketch for recording the compromise and for passing a compromise decree. However, the learned District Munsif Cum Judicial Magistrate, Sriperumbudur, refused to record the compromise and dismissed the petition. The reasons stated for dismissal of this petition are that,

- i)The Advocate Commissioner has stated in his report that he is not able to identify the suit property,
- ii)The parties traced their title to the suit property showing different set of devolution of ownership.

3.The learned counsel for the petitioner submitted that the Advocate Commissioner has found that the electricity service connection in SC.No.570-023-100 stood in the name of one Arumugam, father of second respondent. Of course, it is found that due to the large extent of land in the suit property available in Survey No.219/5, Advocate Commissioner was not able to identify the suit property. Survey No.219/5 comprises of 0.10.0ares that is in an extent of 23cents. Whereas, the suit property measures only 8½ cents. In those circumstances, it was not possible for the Advocate Commissioner to identify the suit property. Due to these kinds of difficulties only, the parties had reached

a compromise. Petitioner is entitled to 8½ cents as per his sale deed, he restricted his claim only to an extent of 5cents to buy peace with respondents.

4.Admittedly, petitioner claims right through sale deed and respondents claim right through Court auction purchase. However, the ground that Advocate Commissioner is not able to identify the suit property and parties traced their title through two different sources are certainly not grounds for refusing to record the compromise entered into between both the parties.

5.In view of this matter, the order of the learned District Munsif Cum Judicial Magistrate, Sriperumbudur, in I.A.No.439 of 2020 in O.S.No.1335 of 2008 dated 07.12.2020 is set aside. The learned District Munsif Cum Judicial Magistrate, Sriperumbudur, is directed to record the statement of both the parties and proceed to pass orders in compromise petition in terms of the memorandum of compromise.

6.Accordingly, this Civil Revision Petition is disposed of. No costs.

7.It is reported that after the dismissal of compromise petition in I.A.No.439 of 2020, the learned District Munsif Cum Judicial Magistrate, Sriperumbudur, dismissed the suit in O.S.No.1335 of 2008 as settled out of court. The learned District Munsif Cum Judicial Magistrate, Sriperumbudur, is directed to restore the said suit and proceed to dispose the compromise petition filed in I.A.No.439 of 2020 as indicated above.

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Index:Yes/No

Internet:Yes/No

Speaking Order: Yes/No

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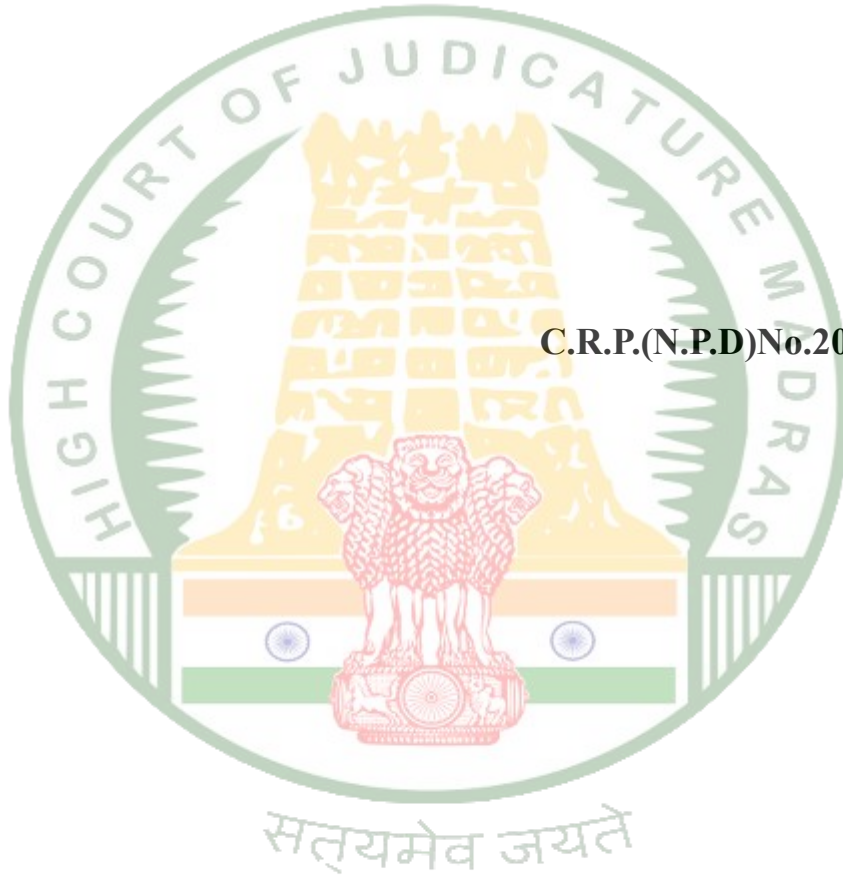
To

1. District Munsif Cum Judicial Magistrate,
Sriperumbudur.

2.The Section Officer,
VR Section,
High Court of Madras.

G.CHANDRASEKHARAN.J,

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