

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.08.2021

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THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) Nos. 1685 & 1686 of 2021

C.R.P. No.1685 of 2021

Gurupriyan

... Petitioner

Vs.

Aradadi Ganesh

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 06.08.2021 passed in I.A. No.386 of 2021 in I.A. No.142 of 2014 in O.S. No.83 of 2010 on the file of the Principal Sub Judge, Puducherry, and allow the CRP.

C.R.P. No.1686 of 2021

Ranipushpalatha

... Petitioner

Vs.

1.B.Sundari

2.Shyamaladevi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 06.08.2021 passed in I.A. No.383 of 2021 in I.A. No.462 of 2013 in O.S. No.33 of 2007 on the file of the Principal Sub Judge, Puducherry, and allow the CRP.

For Petitioner : Ms. R.Hemalatha
(in both petitions)

For Respondent : Mr. Prakash Adiadam
(in both petitions)

COMMON ORDER

C.R.P. No.1685 of 2021 is filed challenging the order dated 06.08.2021, passed by the Principal Sub Judge, Puducherry, in I.A. No.386 of 2021 in I.A. No.142 of 2014 in O.S. No.83 of 2010, and C.R.P. No.1686 of 2021 is filed challenging the order dated 06.08.2021, passed by the Principal Sub Judge, Puducherry, in I.A. No.383 of 2021 in I.A. No.462 of 2013 in O.S. No.33 of 2007.

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2. O.S. No.83 of 2010 was filed by the petitioner in C.R.P. No.1685 of 2021, seeking the relief of declaration of title, recovery of possession, permanent injunction and for further reliefs against the respondent in C.R.P. No.1685 of 2021. Similarly, O.S. No.33 of 2007 was filed by the petitioner in

C.R.P. No.1686 of 2021, seeking relief of declaration of title in respect of B Schedule property, for eviction and for other reliefs against the respondents in C.R.P. No.1686 of 2021. In O.S. No.83 of 2010, the petitioner filed I.A. No.142 of 2014, for appointment of Advocate Commissioner. Accordingly, an advocate commissioner was appointed with a direction to inspect the suit property, note down the physical feature, measure the suit property as per the title deeds and revenue records of both the parties, with the help of surveyor. Similar application was also filed in O.S. No.33 of 2007 in I.A. No.462 of 2013, for the appointment of advocate commissioner. In that petition also the same advocate commissioner was appointed to note down the physical feature and measure the suit property as per the title deeds and revenue records of both the parties.

3. In pursuance to the orders passed in both the application for appointment of advocate commissioner, the advocate commissioner visited the properties along with the surveyor and filed a report. Then the application in I.A. No.386 of 2021 in O.S. No.83 of 2010, was filed under Section 151 C.P.C., to reopen I.A. No.142 of 2014, for filing objection to the commissioner's report and for reissuing warrant to the advocate commissioner, for further inspection. I.A. No.383 of 2021 was filed under Section 151 C.P.C. to reopen I.A. No.464 of 2013 in O.S. No.33 of 2007, for filing objection to commissioner's report

and for reissuing the warrant to the commissioner for further inspection.

4. Learned Principal Sub Judge, Puducherry, after considering the rival submissions and materials, dismissed these applications. Against the said orders of dismissal, the present civil revision petitions have been filed.

5. Learned counsel for the petitioners submitted that in both the applications, specific direction was given to the advocate commissioner to inspect and measure the suit properties with the help of title deeds of both the parties. However, it is submitted that the advocate commissioner and the Surveyor have not measured the properties with the help of title deeds of the parties. He further submitted that it is clearly evident from the evidence of the Surveyor that the advocate commissioner did not measure the property on the basis of the documents of title of the parties. The objections to the commissioner's report could not be filed in time. It is necessary that the objections to the advocate commissioner's report need to be filed for the reason aforesaid and it is also necessary that the Commissioner should be directed again to inspect the property along with the Surveyor to measure the properties with the help of measurements available in the title deeds of both the parties. Hence he prays to allow these petitions.

6. Learned counsel for the respondents opposed these petitions on the ground that the suits have been filed in the year 2007 and 2010. This Court, in CRP (PD) Nos.960 and 961 of 2021, directed the learned Principal Sub Judge, Puducherry to dispose of these suits on or before 31.07.2021. Thereafter, Interlocutory Applications in I.A. No.383 & 386 of 2021, were filed only to protract the proceedings. The advocate commissioner's reports were filed in the year 2018. It is too late to seek permission to file a petition to object the advocate commissioner's report. The commissioner and the Surveyor have inspected and measured the property with the help of the title deeds and revenue records of both the parties. It is absolutely not necessary to direct the advocate commissioner to again inspect and measure the property with the help of Surveyor. Hence, prays for dismissal of these petitions.

7. Considered the rival submissions of both the parties. This Court perused the report of the Advocate Commissioner. The Advocate Commissioner has specifically stated in his report that he directed the parties to identify the suit properties and simultaneously, directed the Surveyor to check the same as per the title deeds and revenue records and measure the properties and identify the suit property. Accordingly, the commissioner's warrant was

executed and the advocate commissioner filed a report along with Surveyor's sketch. Reading of the evidence of Surveyor shows that she measured the properties of both the parties in the presence of Advocate Commissioner. It is stated in her evidence that she fixed the boundary first and then started measuring the properties of both the parties. She had given the measurements on the basis of the possession of the parties as on ground and not on the basis of the records. It is also stated in her evidence that the measurements stated in the title deeds of both the parties are not clear. The report of the Advocate Commissioner and the evidence of the Surveyor clearly show that the title deeds of both the parties were taken into consideration and the properties were measured on the basis of the measurements given in the title deeds, the revenue records and on the basis of possession of the parties as on ground. In the given circumstances, both the advocate commissioner and the Surveyor have done their job to help the Court in arriving at a decision.

8. The order of the learned Principal Sub Judge, Puducherry, makes it clear that these petitions were filed belatedly. Though the petitioners were given sufficient opportunity to file objection to the commissioner's report, no objection was filed. Therefore, those applications were closed.

9. As narrated above, it is seen from the Advocate Commissioner's report and the Surveyor's evidence that the documents of title of both the parties were taken into consideration at the time of measuring the properties. We do not know whether the measurements given in the documents of title of both the parties are correct or not. The documents of title can only be used as a reference. Fixing boundary on the basis of revenue records is the correct mode of executing a survey commission, which was perfectly done in this case. Therefore, this Court finds no reason to interfere with the orders of learned Principal Sub Judge, Puducherry, dated 06.08.2021 passed in I.A. Nos.383 & 386 of 2021 in I.A. Nos.462 of 2013 & 142 of 2014 in O.S. Nos.33 & 83 of 2010, and the same are confirmed with a modification for receiving objections to commissioner's report.

10. Taking note of the fact that the petitioners have not filed objection to the commissioner's report in time, this Court is of the view that an opportunity may be given to the petitioner for filing objection to the advocate commissioner's report. Thus, this Court allows the petitioners to file objection to the advocate commissioner's report, within a period of ten days from today.

11. With the above observations, these civil revision petitions are

dismissed. No costs.

23.08.2021

Index: Yes / No

Speaking order / Non speaking order

Note of Office: Issue order copy by 24.08.2021.

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Copy To:

The Principal Sub Judge, Puducherry.

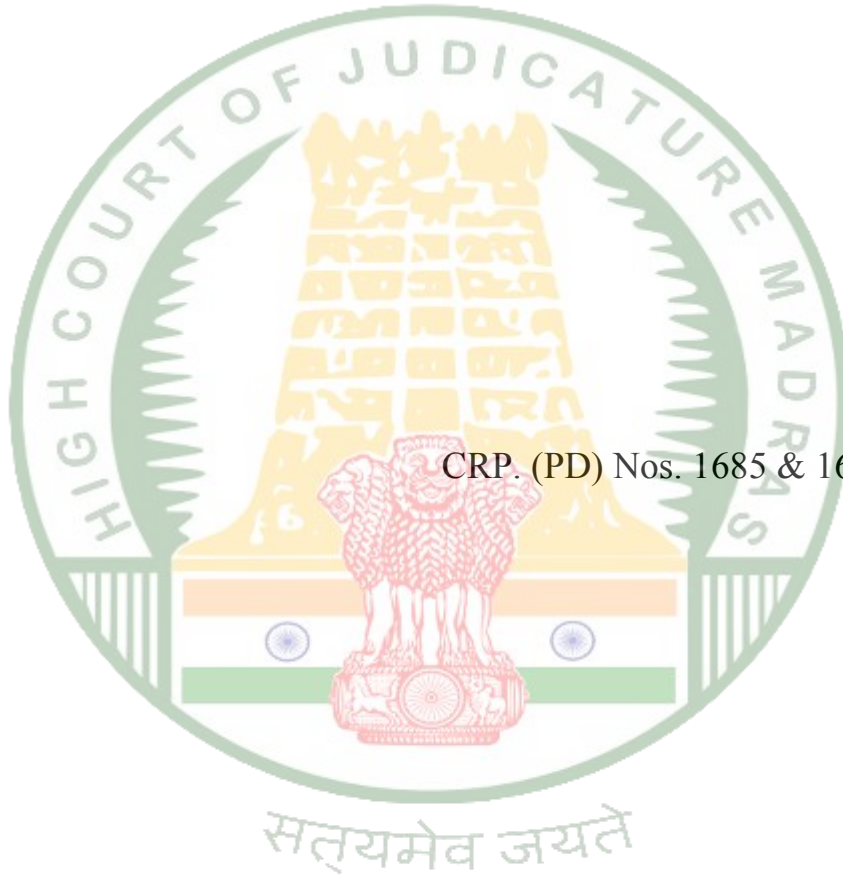


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