

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.2176 of 2019

and C.M.P. No.14066 of 2019

Ellapan

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Petitioner /
Plaintiff

versus

1.Arumugam
2.Perumal Pillai

....

Respondents /
Defendants

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to allow the Revision by setting aside the order dated 23.04.2019 passed by the learned Principal District Munsif, Cheyyar, Tiruvannamalai District in I.A.No.880 of 2018 in O.S.No.210 of 2018.

For Petitioner : M/s.Shivakumar

For Respondents : Mr.K.G.Senthil Kumar

ORDER

This Civil Revision Petition is filed challenging the order passed by the learned Principal District Munsif, Cheyyar, Tiruvannamalai District, in I.A.No.880 of 2018 in O.S.No.210 of 2018.

2. I.A.No.880 of 2018 was filed under Order 26 Rule 9 of C.P.C., for appointment of an Advocate Commissioner along with the Surveyor to inspect the suit "A" Schedule property and "B" Schedule Property, measure the same and file the report. This petition was contested by the respondents. The learned trial Judge, after considering the rival submissions, dismissed the petition. Against the said dismissal order, this Civil Revision Petition is preferred.

3. The learned counsel for the petitioner submitted that, the petitioner filed the suit for the relief of declaration that, the suit "B" Schedule property belonged to him and for the removal of encroachment made in "A" Schedule property by constructing the compound wall by way of mandatory injunction and for costs. He further submitted that, the suit in "A" Schedule

property belonged to him and he is in possession and enjoyment of this property, for many long years. He was also granted patta in this property. "B" Schedule property is a part of "A" Schedule property. The defendants own the property by the side of "A" Schedule property. At the time of constructing the building in his land, he had encroached "A" Schedule property to an extent of East-West 3 feet and North-South 91 feet and put up the compound wall. That necessitated for filing of the suit. Only, if the Advocate Commissioner is appointed along with the Surveyor to inspect the property and file the report, issues between the parties will be resolved conclusively. However, the learned trial Judge has not considered the genuine request of the petitioner and dismissed the petition.

4. In response, the learned counsel for the respondents submitted that, the suit was filed giving false details. The petitioner deliberately omitted to say the relationship between the parties. In fact, the property with large extent belongs to the father of the respondents. The properties were partitioned among the brothers and respective shares were allotted to them. Each one of them, is in the possession and enjoyment of the

properties allotted to them on 27.11.2009. The respondents have not encroached the property of the petitioner. This petition is filed only to collect evidence and to drag on the proceedings. Therefore, the learned counsel for the respondents prays for dismissal of this petition.

5. Considered the rival submissions and perused the records.

6. As already said, the suit was filed for the relief of declaration that, "A" Schedule property belongs to the petitioner and for removal of the encroachment in "B" Schedule property. Admittedly, there is a dispute with regard to "B" Schedule property, as to whether "B" Schedule property belongs to the petitioner or respondents. In the nature of the suit and the relief sought for in this suit, this Court is of the considered view that, unless the Advocate Commissioner is appointed to inspect the property along with the qualified Surveyor to find out whether "B" Schedule property is a part of "A" Schedule property; whether there is any encroachment; if at all there is any encroachment, the Court would not be in a position to correctly decide the case.

7. The petitioner has filed the copy of the chitta issued to him in respect of the suit "A" Schedule property. It shows that, he was granted patta No.21, in respect of Survey No.56/16, to an extent of 184 Square Meters. Petitioner claims that, "B" Schedule property is a part of "A" Schedule property, in which, the respondents put up the compound wall by encroaching it. All these issues, as already indicated, only if the Advocate Commissioner is appointed along with the Surveyor to inspect and measure the property, will be resolved conclusively.

8. Therefore, this Court finds that the order of the learned Principal District Munsif, Cheyyar, Tiruvannamalai District dated 23.04.2019 in I.A.No.880 of 2018 in O.S.No.210 of 2018, is not correct and the order, is set aside. The learned Principal District Munsif, Cheyyar, Tiruvannamalai District, is directed to appoint the learned Advocate Commissioner and issue direction to inspect the suit properties along with the qualified Surveyor and file the report along with plan.

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9. This Civil Revision Petition is allowed accordingly.

Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

13.09.2021

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

psa/sri

To

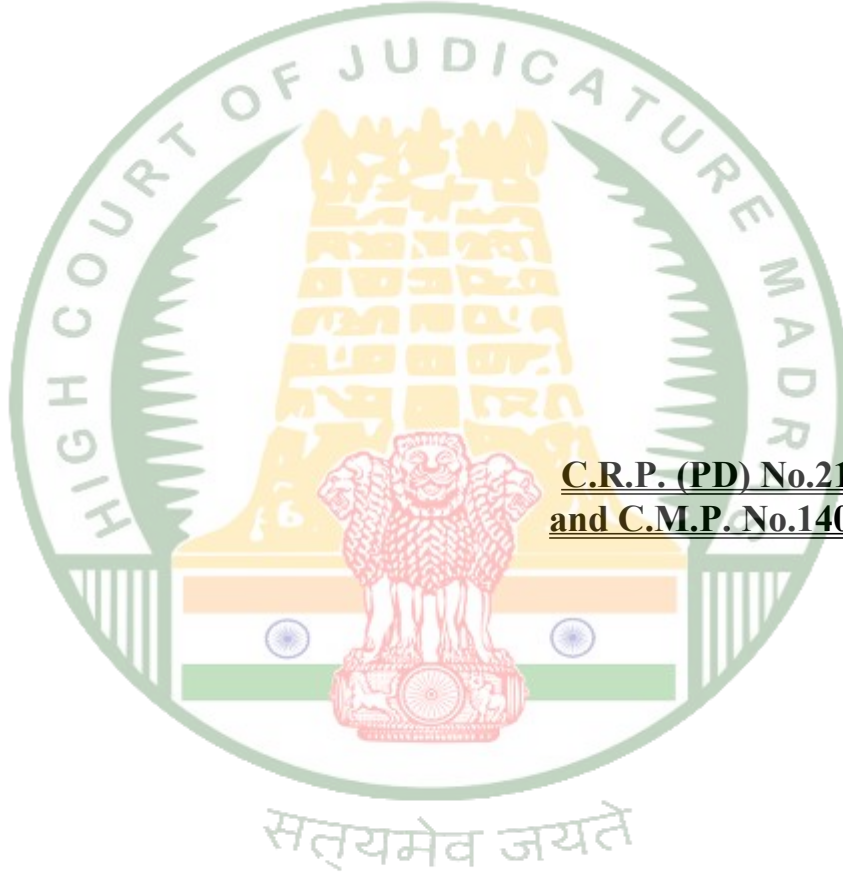
The Principal District Munsif,
Cheyyar, Tiruvannamalai District.



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G.CHANDRASEKHARAN, J.

psa / sri



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