

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP (PD) No.1565 of 2017
and CMP.No.7322 of 2017

P.Ramanathan

..Petitioner

Vs.

Parimalavardhini

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 19.01.2017 made in I.A.No.694 of 2015 in I.A.No.248 of 2015 in O.S.No.77 of 2015 on the file of the Sub Court, Gobichettipalayam.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.R.T.Doraisamy

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 19.01.2017 made in I.A.No.694 of 2015 in I.A.No.248 of 2015 in O.S.No.77 of 2015 on the file of the Sub Judge, Gobichettipalayam, thereby allowing the petition directing the Advocate Commissioner to inspect the suit property as per the old survey and resurvey and natham survey of the suit property and file a report along with comprehensive super imposed sketches.

2. The petitioner is the plaintiff and the respondent is the defendant.

The petitioner filed a suit for recovery of possession and also mandatory injunction directing the respondent to remove the encroachment made in the suit property along with the prayer of perpetual injunction in respect of the suit property. Pending suit, the petitioner filed a petition for appointment of Advocate Commissioner to inspect the suit property as marked in the plaint plan, take measurements therein with the help of a surveyor and note down the encroachment made therein and to file a report in I.A.No.248 of 2015. The same was allowed and an Advocate Commissioner was appointed to inspect the suit property with the help of a surveyor to note down the encroachments made in the suit property and to file a final report.

3. At that juncture, the respondent filed a petition for direction, directing the Advocate Commissioner to measure the suit property as per old survey, resurvey and natham survey and to find out the 6 ¼ cents purchased by the respondent's father as per registered sale deed dated 26.06.1961 and to ascertain its old survey number, resurvey number and natham survey number and direct the Commissioner to file a super imposed sketches for the same. The Trial Court allowed the petition on the ground that there is a dispute instead of identification of the suit property. According to the respondent, it was purchased by his father and also classified as 'road poramboke'. Therefore,

directed the Advocate Commissioner to measure the property as prayed for.

4. A perusal of the plaint reveals that the petitioner filed a suit for recovery of possession and mandatory injunction in respect of the suit property. He also filed a rough plan and annexed with the plaint. It reveals that the respondent is in possession and enjoyment of the property comprised in RS.No.301/4, whereas, the suit property comprised in RS.No.301/2, according to the petitioner, the respondent encroached some portion of the suit property which is marked as “ABCDE” in the plan annexed along with the plaint. Therefore, the prayer sought for by the respondent as stated supra is completely out side of the scope of prayer sought for by the petitioner herein. In the suit filed by the petitioner, the respondent cannot sought for such prayer that to inspect the property which was purchased by his father and cannot be measured as per the old survey number. Therefore, the Advocate Commissioner is directed to inspect the suit property with the assistance of a qualified surveyor to measure the suit property and to note down the encroachment made in accordance in respect of the sale deed of the petitioner as well as the respondent and also as per the revenue records and file a report with plan.

G.K.ILANTHIRAIYAN,J,

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5. With the above directions, the Civil Revision Petition is disposed of.

No costs. Consequently connected miscellaneous petition is closed.

31.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

The Sub Judge,
Gobichettipalayam.

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