

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2021

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

CRP.PD.No.1683 of 2017  
and CMP.No.7927 of 2017

G.Kadar Sheriff

..Petitioner

Vs.

R.Natarajan

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 01.12.2016 made in IA.No.1627 of 2015 in OS.No.231 of 2010 on the file of the learned District Munsif Court, Sankari.

For Petitioner : Mr.N.Manokaran

For Respondent : M/s.D.Sathya

**ORDER**

This civil revision petition is arising out of fair and decretal order dated 01.12.2016 made in IA.No.1627 of 2015 in OS.No.231 of 2010 on the file of the learned District Munsif Court, Sankari thereby allowing the petition for appointment of advocate commissioner to measure the suit property.

2. The petitioner is the plaintiff and the respondent is the defendant. The petitioner filed suit for declaration declaring that the common wall is for the petitioner as well as the respondent herein and also mandatory injunction directing the respondent to remove the encroached portion and restore it to original position by constructing the common wall. While pending the suit, at the instance of the petitioner, advocate commissioner was appointed to inspect the suit property and note down the physical features of the same. Accordingly, Advocate Commissioner visited the suit property and noted down the physical features and filed his report along with the plan. Thereafter, the respondent filed another application for appointment of another Advocate Commissioner to measure the suit property as per the sale deeds of the petitioner and the respondent. The same was allowed and aggrieved by the same, the present civil revision petition is filed.

3. The learned counsel for the petitioner would submit that on the application filed by the petitioner already an Advocate Commissioner was appointed and he inspected the suit property and filed his report as early as on 07.07.2011 itself. The Advocate Commissioner visited the

property and also noted down the physical features of the suit property and filed his report. The respondent did not file objection to Advocate Commissioner report and also did not file any petition to scrap the Advocate Commissioner report. Without doing so, the respondent came forward with another application for appointment of another Advocate Commissioner, that too after five years after commencement of trial. It amounts to gathering of evidence and to fill up the lacuna on the part of the respondent herein. Already Advocate Commissioner measured the property and noted down the encroachment made by the respondent and as such without scraping the same, new Advocate Commissioner cannot be appointed.

4. Per contra, the learned counsel for the respondent would submit that the respondent has absolutely no objection for the earlier report filed by the Advocate Commissioner. In the written statement, the respondent categorically stated that at the time of commissioner's visit, the defendant and his counsel requested the Advocate Commissioner to measure the property of the plaintiff as per the plaintiff sale deed and the defendant's property as per the defendant's sale deed. But the Advocate Commissioner objected to measure the same as per their respective sale

deeds. She further submitted that the petitioner illegally claims and also alleged that the respondent encroached 1 <sup>1/2</sup> feet without any basis. When the specific allegation about the encroachment by the respondent about 1 <sup>1/2</sup> feet, it is just and necessary to measure the property in accordance with their respective sale deeds. Therefore, the court below rightly allowed the petition to measure the property in accordance with their respective sale deeds.

5. Heard, Mr.N.Manokaran, the learned counsel for the petitioner and M/s.D.Sathya, the learned counsel for the respondent.

6. The petitioner is the plaintiff and the respondent is the defendant. The petitioner filed suit for declaration and also mandatory injunction to remove the encroachment and to restore the common wall. At the instance of the petitioner, Advocate Commissioner was appointed to inspect the suit property and note down the physical features. Accordingly, he inspected the suit property and filed his report with plan. Now the respondent came forward with the petition for appointment of Advocate Commissioner to measure the suit property in accordance with their sale deeds for the reason that the petitioner specifically alleged that the respondent encroached the petitioner's property admeasuring 1 <sup>1/2</sup> feet.

7. Admittedly, the respondent has no objection on the earlier report filed by the Advocate Commissioner. Though the respondent did not file any petition to scrap the report of the earlier Advocate Commissioner, the present Advocate Commissioner application was filed for the above said reason. It is also seen that the specific case of the petitioner is that the wall is common to the petitioner and the respondent and now it is encroached by the respondent and also damaged the same by putting up new construction. Therefore, it is just and necessary to measure the suit property in accordance with their respective sale deeds. Therefore, this Court finds no infirmity or illegality in the order passed by the court below.

8. However, the learned Advocate Commissioner is directed to measure the property as per the sale deed dated 12.03.2004 belong to the respondent and as per the sale deed dated 14.02.1992 belong to the petitioner herein with the help of the surveyor, fix boundary line for both the properties and file report. After receipt of the Advocate Commissioner's report, the trial court is directed to dispose of the suit within a period of three months from the date of receipt of copy of this order.

9. With the above directions, this civil revision petition is

dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

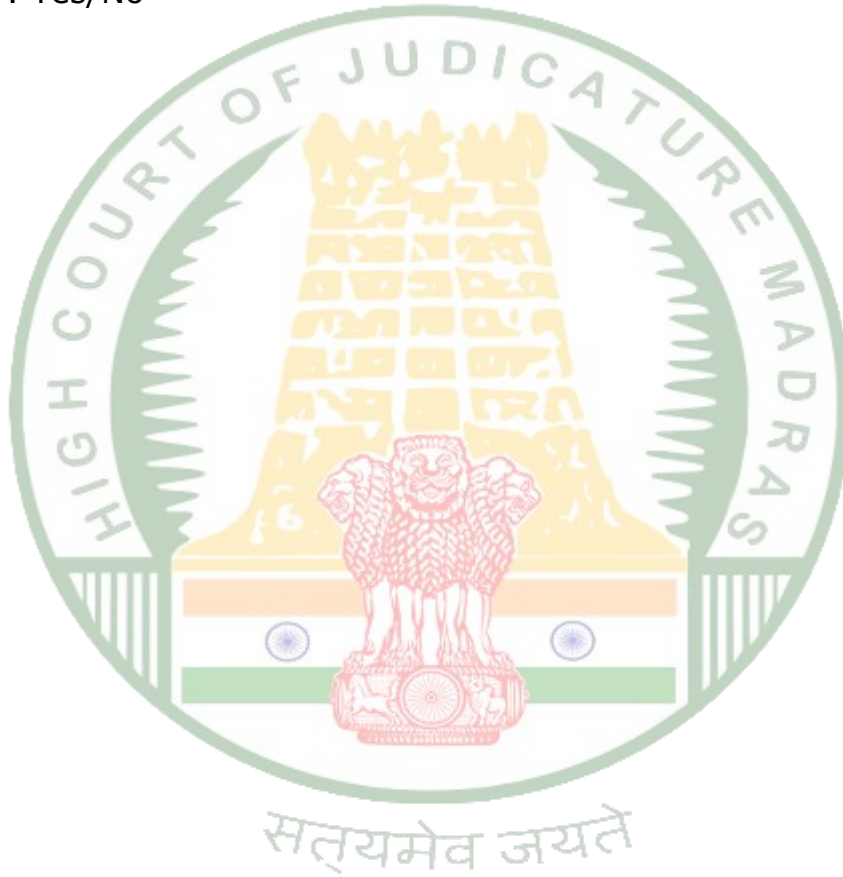
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Speaking/Non-speaking order

Index : Yes/No

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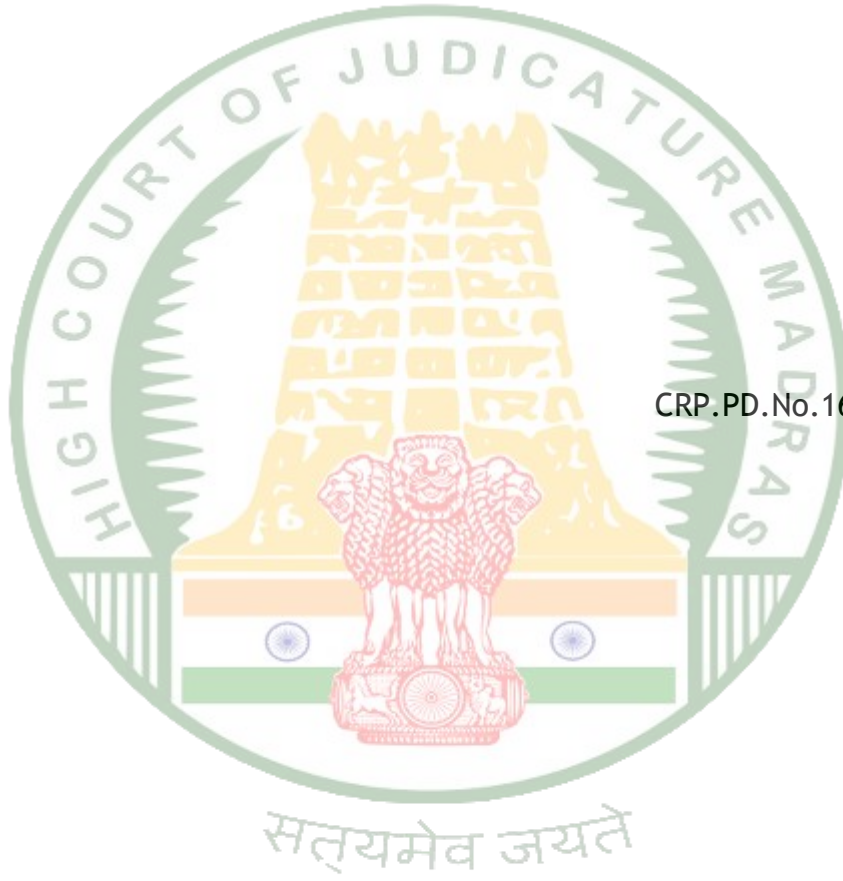
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Sankari.



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**G.K.ILANTHIRAIYAN,J.**

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