

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(PD)Nos.2786 of 2017 & 2501 of 2018
and C.M.P.Nos.13167 of 2017 & 15266 of 2018

S.Palanisamy

...Petitioner in both C.R.Ps

Vs

1.Lakshmi
2.Kolandayal
3.Pappathi
4.Samiyathal
5.Kuppusamy
6.Sathish

... Respondents in both C.R.Ps

Prayer in C.R.P.No.2786 of 2017:Civil Revision Petition filed under Article 227 of the Constitution of India, prayed to set aside the fair and decreetal order dated 02.12.2016 passed in I.A.No.633 of 2016 in O.S.No.619 of 2015 on the file of the Principal District Munsif, Erode and allow the same.

Prayer in C.R.P.No.2501 of 2018:Civil Revision Petition filed under Article 227 of the Constitution of India, prayed to set aside the fair and decreetal order dated 02.08.2018 passed in I.A.No.696 of 2018 in O.S.No.619 of 2015 on the file of the Principal District Munsif, Erode and allow the same.

For both C.R.Ps

For Petitioner : Mr.R.Kannan
for Mr.V.Regunathan
For Respondent : Mr.A.Sundaravadhanan

ORDER

These Civil Revision Petitions have been filed against the order made in I.A.Nos.633 of 2016 and 696 of 2018 in O.S.No.619 of 2015 dated 02.12.2016 and 02.08.2018 respectively, on the file of the Principal District Munsif, Erode.

2. I.A.No.633 of 2016 was filed to appoint an Advocate Commissioner and I.A.No.696 of 2018 was filed to amend the plaint and both the applications were dismissed by the Court below. Aggrieved over the same, the present Civil Revision Petitions have been filed.

3. The learned counsel for the petitioner submitted that the petitioner filed I.A.No.633 of 2016 for appointment of Advocate Commissioner, which is just and necessary to measure the suit property and the respondents' property for fixing the boundary lines between the Survey Nos.88/2 and 88/3 to solve the dispute. It would help the Court to bring quietus to the litigation. The Court below has dismissed the application filed for appointment of Advocate

Commissioner with non application of mind.

4. He further submitted that the petitioner filed I.A.No.696 of 2018 for amending the plaint to include the prayer for fixing the boundary line between the properties of the petitioner and respondents and the same was dismissed by the Court below stating that the petition for amendment has been filed belatedly. The petitioner is not going to add any new pleading or the prayer, only based on the existing pleading the petitioner wants to add one more prayer and some addition in the plaint which is necessary to decide the dispute between the petitioner and respondents.

5. He also submitted that if C.R.P.No.2786 of 2017 filed against the dismissal order in I.A.No.633 of 2016 is allowed, the other C.R.P.No.2501 of 2018 may be dismissed as infructuous in view of the relief granted in C.R.P.No.2786 of 2017 and vice versa.

6. The learned counsel for the respondent submitted that both the Civil

Revision Petitions are one and the same. The intention of the petitioner is to appoint an Advocate Commissioner. The issues involved in the suit cannot be determined by the Advocate Commissioner and hence, the same may be dismissed.

7. He further submitted that in the event, this Court considering any one of the Civil Revision Petition i.e appointment of Advocate Commissioner or amendment of plaint, the respondents may be given opportunity to file their objection and appropriate pleadings before the Court below.

8. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

9. Upon the hearing the learned counsel for the petitioner and the respondents and on perusal of the records, this Court feels that it would be appropriate to appoint Advocate Commissioner for the following reasons stated by the petitioner:

(i) The vendor of the petitioner is in enjoyment of land in Natham R.S.No.88/3, which lies on the eastern side of the suit property. The petitioner keeping the eastern side suit property as vacant and maintaining the same by growing plants and by placing tank and other things. The respondents now and then quarrel with the petitioner in several aspects and giving disturbance to the petitioner in enjoying the suit property. Therefore the petitioner filed an application for interim injunction and the same was dismissed by this Court on 21.03.2016.

(ii) After dismissal of the said injunction application, during the first week of May 2016, the respondents unlawfully obliterated the existing boundary line in between the suit property and their property with a view to encroach the suit property. While the petitioner questioned about their unlawful activity, the respondents replied that the suit property is their whims and fancies and the petitioner cannot dictate to them. Therefore in order to finalize the dispute between the petitioner and the respondents, the petitioner filed the present application for appointing a commissioner directing him to measure the suit property and the land of the respondents with the assistance of Taluk

Surveyor and to fix the boundary lines between the suit property and property of the respondents lies in Natham R.S.No.88/3.

10. In view of the above, this Court is of the view that in order to sort out the issue between the petitioner and the respondents, appointment of Advocate Commissioner to survey the suit property is necessary as narrated by the petitioner that it would also help the Court below to come to the conclusion while passing the judgment.

11. Therefore, the order dated 02.12.2016 made in I.A.No.633 of 2016 in O.S.No.619 of 2015 on the file of the principal District Munsif, Erode is set aside. While setting aside the order, this Court directs the Principal District Munsif, Erode to appoint an Advocate Commissioner to survey the suit property and the land of the respondents with the assistance of Taluk Surveyor and to fix the boundary lines between the suit property and property of the respondents lies in Natham R.S.No.88/3. The entire process of surveying the said land and filing of report shall be completed within a period of four months from the date of receipt of a copy of this Order.

12. In view of the relief granted in C.R.P.No.2786 of 2017, no further order is required in C.R.P.No.2501 of 2018. Since this Court decided the application for appointment of Advocate Commissioner, there is no need of granting any liberty to the respondents to file any additional pleadings.

13. With the above observation and direction the C.R.P.No.2786 of 2017 is disposed of and C.R.P.No.2501 of 2018 is dismissed. No cost. Consequently, connected miscellaneous petitions are closed.

06.01.2021

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

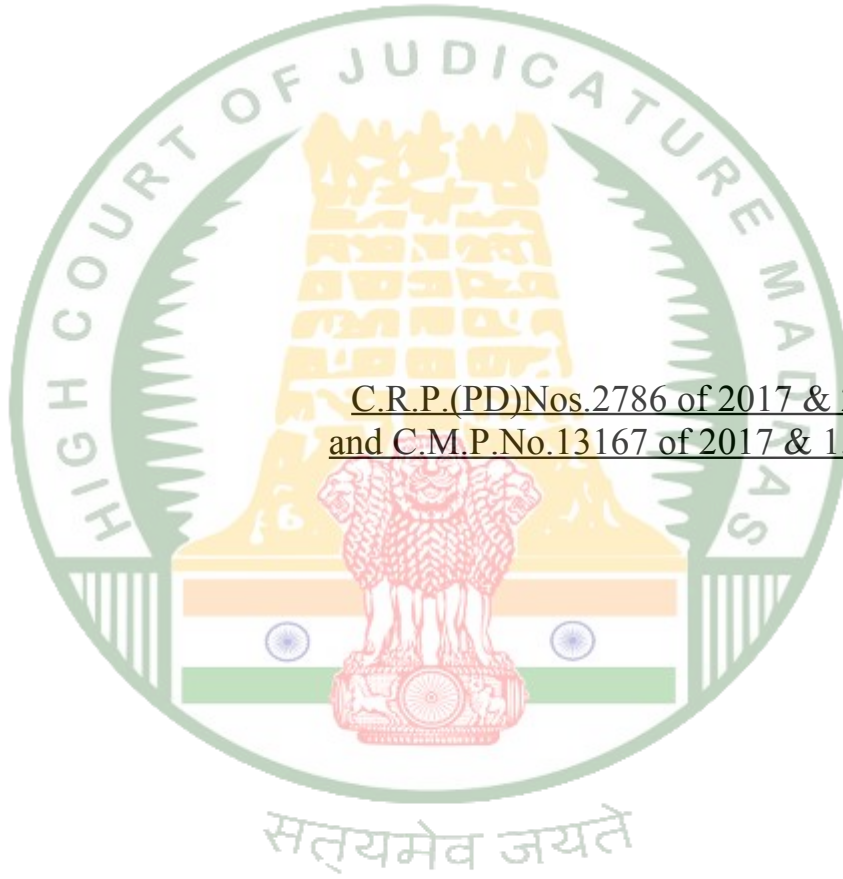
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To:
The Principal District Munsif, Erode.

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KRISHNAN RAMASAMY,J.

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