



C.R.P.Nos.3972 & 3977 of 2018

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

|                      |          |                   |
|----------------------|----------|-------------------|
| <b>RESERVED ON</b>   | <b>:</b> | <b>05.07.2022</b> |
| <b>PRONOUNCED ON</b> | <b>:</b> | <b>06.12.2022</b> |

**CORAM:**

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

**C.R.P.Nos.3972 & 3977 of 2018**  
**and C.M.P.Nos.22057 & 22061 of 2018**

Meenakshi Ammal Polytechnic,  
A unit of M/s.Meenakshiammal Trust,  
Rep. By its Managing Trustee,  
Mr.A.N.Radhakrishnan,  
S/o Natesa Pillai,  
No.931-E, 11<sup>th</sup> Sector,  
69<sup>th</sup> Street, K.K.Nagar,  
Chennai 600 078  
cases

.. Petitioner in both

/Decree holder

Versus

1) Mani

2) Elumalai

3) Velayutham

.. RR 1 to 3 in  
C.R.P.No.3972 of 2018

4) B.Manibalan

.. Sole Respondent in  
C.R.P.No.3977 of 2018



C.R.P.Nos.3972 & 3977 of 2018

**COMMON PRAYER:** Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the order and decree dated 19.09.2018 in E.A.Nos.37 & 38 of 2018 in E.A.No.62 of 2008 in E.P.No.4 of 2008 passed by the learned District Munsif Cum Judicial Magistrate, Uthiramerur.

***In both cases:***

For Petitioner : Mr.M.Vishnu Venkatesh

For Respondents : Mr.G.Punniyakotti

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### **COMMON ORDER**

These Civil Revision Petitions have been filed against the order and decree, dated 19.09.2018 made in E.A.Nos.37 & 38 of 2018 in E.A.No.62 of 2008 in E.P.No.4 of 2008 passed by the learned District Munsif Cum Judicial Magistrate, Uthiramerur. Since the issue involved in both the cases are one and the same, they are disposed of by this common order.



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**2.** Suit in O.S.No.59 of 1999 was filed by the petitioner herein against the respondents seeking for declaration of title of the suit properties in favour of the petitioner/plaintiff, granting mandatory injunction, to direct the defendants to demolish the super structures, to deliver vacant possession of the suit property to the plaintiff and for granting permanent injunction against the defendants not to encroach or put up any construction over the suit property.

**2.1.** An ex parte decree was passed in the suit, in favour of the petitioner vide judgment and decree dated 05.11.2004. Against the said ex parte order, the defendants in the said suit, have filed I.A.Nos.4 and 5 of 2005 and the same were dismissed on 21.06.2005. Aggrieved against the said order of dismissal, the defendants preferred C.M.A.Nos.6 and 10 of 2005 before the Sub Court, Kancheepuram and the said C.M.A's also came to be dismissed by a common judgment dated 27.09.2006.

**2.2.** Meanwhile, the respondents in the above suit, have filed civil



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revision petitions in C.R.P.(NPD) Nos.666 & 667 of 2007, which were filed against the dismissal of C.M.A.Nos.6 and 10 of 2005. This Court had dismissed the Civil Revision Petitions by observing that the application for appointment of Advocate Commissioner for the fourth time to measure the property and to find out the boundaries, was nothing but to drag on the proceedings and there was lack of bonafide on the part of the respondents.

**2.3.** The petitioner herein/ decree holder filed the E.P.No.4 of 2008 in O.S.No.59 of 1999 for taking delivery of the suit properties pertaining to suit in O.S.No.59 of 1999. The respondents in C.R.P.No.3972 of 2018 filed a claim petition in E.A.No.62 of 2018 in E.P.No.4 of 2008 under Section 47 of the Civil Procedure Code for declaring that the land in occupation of petitioner in Punjai Tharisu, initially comprised in S.No.383/3F between Uthiramerur to Kancheepuram Thar Road (village Road) and S.No.383/1, is not forming part of S.No.383/3A.

**2.4.** Again, claim petitions in E.A.Nos.37 & 38 of 2018 were filed by the respondents in C.R.P.Nos.3972 & 3977 of 2018, under Order 16



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Rule 1, 5, 6 and Section 151 of the Criminal Procedure Code to issue summons to the Taluk Head Surveyor to produce documents of 'A' Register, FMB relating to No.57, Perunkozhi Village, Maduranthakam Taluk, (Previously Maduranthakam Taluk Limit Village), No. 325, Perunkozhi Village, Uthiramerur Taluk, No.44, Perunkozhi Village, Uthiramerur Taluk Adangal and also for the purpose of adducing evidence relating to the aforesaid S.No.383 and its sub division including S.No.383/3F, 383/3A. Upon considering the submissions made by the learned counsel for the petitioners and the respondent, the Executing Court had allowed E.A.No.37 of 2018. Aggrieved against the said order, the respondent therein/ revision petitioner herein, has filed the present revision before this Court.

**3.** The learned counsel for the revision petitioner would contend that the suit was filed in the year 1993 and the decree was passed in the year 2004 and it became final, based on the subsequent orders passed by this Court. The E.P. filed by the decree holder is pending from the year 2008. According to the learned counsel for the petitioner/decreed holder, the



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E.A.'s have been filed only to delay and defeat the fruits of the decree.

Further, it is the contention of the learned counsel for the petitioner that the Executing Court, without taking into consideration the Advocate Commissioner' Report and Sketch available on record, has allowed the E.A. Therefore, the learned counsel for the petitioner prayed to set aside the order and decree dated 19.09.2018 in E.A.Nos.37 & 38 of 2018 in E.A.No.62 of 2008 in E.P.No.4 of 2008 passed by the learned District Munsif Cum Judicial Magistrate, Uthiramerur and allow the present revisions.

4. Per contra, the learned counsel for the respondents would submit that an ex parte decree was passed, based on the manipulated revenue records. He further submitted that no notice of survey or opportunity was offered to the respondents before clubbing of Punjai Tharisu lying between Uthiramrur to Kancheepuram Thar Road (Village road) and S.No.383/1 in S.No.383/3A. Hence, the order and decree dated 19.09.2018 in E.A.Nos.37 & 38 of 2018 in E.A.No.62 of 2008 in E.P.No.4 of 2008 passed by the learned District Munsif Cum Judicial Magistrate,



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Uthiramerur needs no interference and hence, prayed for the dismissal of the revision petitions.

5. Heard the learned counsel for the petitioner/decreed holder and the learned counsel for the respondents/petitioners in EA.Nos.37 and 38/2018 and perused the materials placed before this Court.

6. As against the decree passed in the suit, defendants/respondents herein filed CMA Nos.6 and 10 of 2005 before the lower appellate court, but the said appeals were dismissed. Against which C.R.P.(NPD) Nos.666 & 667 of 2007 are filed by the defendants/respondents herein, which were also dismissed by this court, by upholding the order of the lower appellate court. In such circumstances, the respondents herein filed E.A.Nos.37 and 38 of 2018 for appointment of Advocate Commissioner for the fourth time to measure the property and to find out the boundaries. The said application was nothing but to drag on the proceedings. It is to be seen that the decree was passed only after taking into consideration the report filed by the Advocate Commissioner and Sketch as regards the suit



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properties. As such, the learned Judge ought not to have allowed the E.A.Nos.37 and 38 of 2018, to measure the suit properties.

7. Taking such view, in the interest of justice, I am inclined to set aside the order passed in E.A.Nos.37 & 38 of 2018 in E.A.No.62 of 2008 in E.P.No.4 of 2008. Accordingly, the order dated 19.09.2018 is hereby set aside. The Civil Revision Petitions are Allowed. No costs. Consequently, connected miscellaneous petitions are closed.

**06.12.2022**

Index : Yes / No

Internet : Yes

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To:

- 1) The District Munsif Cum Judicial Magistrate, Uthiramerur.
- 2) The Section Officer, V.R.Section, High Court, Madras.



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**J.NISHA BANU, J.,**

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Common Order made in  
**C.R.P.Nos.3972 & 3977 of 2018**

Dated:  
**06.12.2022**