



C.R.P.(MD).No.1602 of 2017

-BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 22.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.1602 of 2017

and

C.M.P(MD) No.9076 of 2017

Karuppayee

... Petitioner/Petitioner/Plaintiff

-vs-

Palaniammal

... Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 02.06.2017 passed in I.A.No.13 of 2017 in O.S.No.153 of 2011 on the file of the learned District Munsif cum Judicial Magistrate No.1, Usilampatti.

For Petitioner : Mr.J.Selvam

For Respondent : Mr.D.Malaichamy

ORDER

The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, against the fair and decreetal order dated 02.06.2017 passed in I.A.No.13 of 2017 in O.S.No.153 of 2011



C.R.P.(MD).No.1602 of 2017

WEB COPY

on the file of the learned District Munsif cum Judicial Magistrate No.1,
Usilampatti.

2. The petitioner herein is the plaintiff and the respondent herein is the defendant before the Court below and both are sisters.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

4. According to the contention of the plaintiff, their father has settled an extent of 2 ½ cents each to both the plaintiff and the defendant.

5. The learned counsel appearing for the petitioner/plaintiff would submit that the defendant has orally sold an extent of one cent to the plaintiff. Further even in respect of the remaining extent, they contented that they perfected title by way of adverse possession. Hence, they filed a suit for declaration and for other reliefs. In which, the respondent/defendant has filed the written statement raising counter claim for declaration and recovery of possession of their share of 2 ½ cents. It appears that in the said suit, the



C.R.P.(MD).No.1602 of 2017

defendant has moved an application for an appointment of Commissioner in I.A.No.609 of 2013. Wherein a Commissioner was appointed and he filed a report on 08.06.2016 along with the rough sketch as well as the sketch provided by the Surveyor.

6. Aggrieved with the said Commissioner's report, the plaintiff/petitioner herein has moved an application in I.A.No.13 of 2017 with the grievance that both the petitioner and the respondent's properties have not been measured and that the Commissioner's report is not in accordance with the existing physical features. However, the Court below has rejected the said application on the ground that the petitioner did not move an application for scraping the earlier Commissioner's report.

7. Aggrieved with the said order, the petitioner has filed the instant Civil Revision petition.

8. While considering the application, both the counsel invited the attention of this Court in respect of the sketch provided by the Surveyor's Report. On perusal of the same, the Commissioner has found on the field that



C.R.P.(MD).No.1602 of 2017

WEB COPY

there is only an extent of 2.39 cents in the possession of the plaintiff viz., Karuppayee, and 1.57 cents in the possession of the defendant K.Palaniammal. Therefore, both the counsel would submit that in order to have a clarity over the issue, it is appropriate to reissue the warrant of Commission to the same Advocate Commissioner with a direction to the learned Advocate Commissioner to measure both the plaintiff as well as the defendant's properties through the respective documents and other relevant revenue records. If in any case, the previous Advocate Commissioner is not interested in complying the warrant of Commission, then the Court below is at liberty to appoint any other Advocate as a Commissioner to measure the suit property as indicated.

9. In the result, this Civil Revision Petition is **disposed of**. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

22.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi



C.R.P.(MD).No.1602 of 2017

To

WEB COPY

1. The District Munsif cum Judicial Magistrate No.1,
Usilampatti.



WEB COPY



C.R.P.(MD).No.1602 of 2017

C.KUMARAPPAN,J.

ebsi

C.R.P(PD)(MD)No.1602 of 2017

22.08.2023