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CRP(PD).No.3361 & 3362 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.04.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

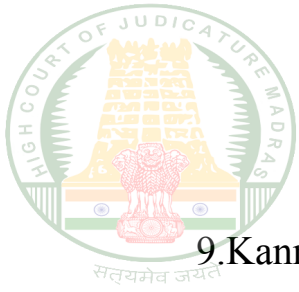
CRP.(PD).Nos.3361 & 3362 of 2023
and
CMP.Nos.20885 & 20889 of 2023

1.Mrs. Jayamani
2.Mr.Vivek
3.Mrs.Shanmugapriya

... Petitioners in both CRPs

Vs.

1.C.Rukmani
2.C.Devikarani
Chinnusamy (died)
3.Ramasamy
4.Ganapathi
5.Selvi
6.Dhanalakshmi
7.Selvakumar
8.Janaki



9.Kannaki

Subbaiyan (died)

10.Lakshmi

11.Deivasami

... Respondents in both CRPs

Prayer in CRP.No. 3361 of 2023:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order dated 15.06.2023 passed in IA.No.3 of 2020 in OS.No.177 of 2017 on the file of Principal District Munsif Court, Erode.

Prayer in CRP.No.3362 of 2023:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order dated 15.06.2023 passed in IA.No.4 of 2020 in IA.No.640 of 2017 in OS.No.177 of 2017 on the file of Principal District Munsif Court, Erode.

For Petitioner : M/s.K.S.Jeyaganeshan in both CRPs

For Respondent : M/s.K.Govi Ganesan
for R.1 and R.2 in both CRPs

: R.3 to R.11 - Given up



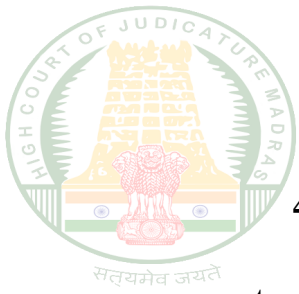
COMMON ORDER

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Challenging the orders passed in IA.Nos. 3 & 4 of 2020 in OS.No.177 of 2017, on the file of the Principal District Munsif Court, Erode, The defendants 10, 13 & 14 are the petitioners before this Court.

2. IA.No.3 of 2020 has been filed to strike off the advocate Commissioner's Report dated 10.01.2020 filed in IA.No.1/2019 in IS.No.177 of 2017.

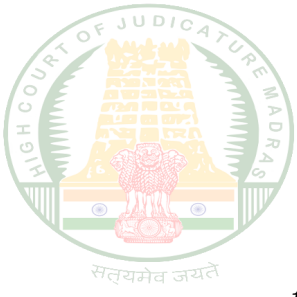
3. IA.No.4 of 2020 has been filed to reissue the commission warrant to the Commissioner with the direction to take measurements of the petitioners' property and the property of the respondents in and around the suit property with reference to old and new survey numbers of the revenue records and document of title deeds in favour of all the parties of the suit concerned with the help of a qualified government surveyor not below the rank of a Taluk Surveyor and file her report with plan.



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4. The petitioners had filed the impugned applications contending that the physical features that had been set out in the Advocate Commissioner's Report do not correspond to the property on site. In fact, the 2nd respondent/ 2nd plaintiff is not even in a position to show the boundaries of her property. The petitioners would submit that they had filed a detailed objection to the Report. On the representation of the petitioners herein that the plaintiffs are not in a position to identify the boundaries of their own property and that they had put up construction long ago leaving sufficient space for maintaining the compound wall on the western side, the Court was pleased to vacate the injunction order granted in favour of the plaintiffs. The petitioners would submit that the Firka Surveyor was unable to identify or trace the boundary stones. Despite objections of the petitioners and their advocate, the Firka Surveyor measured only the western side of the suit property on the basis of an unmarked newly planted stone claiming that to be the boundary stone.

5. The Advocate Commissioner's Report was sought to be scrapped for the following reasons:-



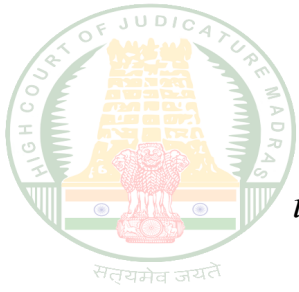
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"1. Without fixing the real boundary stones or fixing the 4 boundary of the suit property based upon old and new survey numbers and maps no proper measurements can be taken by a government surveyor to identify the suit property as per the survey manual.

2. The Firka surveyor, if could not find boundary stones of suit property should first find out available marked boundary stones fixed by the survey department from the nearly/adjoining the suit fields and based upon such marked boundary stones the suit field the boundaries of the suit property has to be fixed.

3. In the present case, the Firka surveyor could not trace any marked boundary stones in and around the suit property to fix the actual boundaries of the suit property, except the eastern side Highway marked boundary stones which he did not consider at all



inspite of request from the respondents."

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6. However, the learned Trial Judge had dismissed the applications on the ground that the purpose of appointing an Advocate Commissioner is only to elucidate the matter in dispute and not for any other reason. Aggrieved by the same, the petitioners are before this Court.

7. Heard the learned counsel on either side and perused the records.

8. A perusal of the Commissioner's Report would clearly show that the Commissioner has filed a report after observing that the 2nd plaintiff is not in a position to identify the boundaries. Therefore, it is a report that cannot be relied upon and one which does not set out the true character of the property.

9. In these circumstances, the Civil Revision Petitions are allowed. The impugned orders passed in IA.Nos.3 and 4 of 2020 are



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set aside and the report filed by the Advocate Commissioner is scrapped. The learned Principal District Munsif, Erode is directed to appoint a new Advocate Commissioner. The said exercise is directed to be completed within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.

04.04.2025

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

1.The Principal District Munsif Court, Erode.



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P.T. ASHA. J.,

(shr)

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