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C.R.P.(PD).No. 201 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.02.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).Nos. 201 of 2025

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C.M.P.No. 1324 of 2025

M/s.Ameta Bahaman Samaz Trust
Reps by its Trustee B.Omprakash
No.70, New Balaji Nagar,
Athippattu,
Chennai – 600 120

...Petitioner

Vs.

A.Mohammed Sadique

...Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 21.06.2024 made in IA.No.3 of 2023 in IA.No.2 of 2019 in OS.No.30 of 2019 on the file of the District Munsif at Ponneri, Thiruvallur District.



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For Petitioner : Ms. Thanganila MK.

ORDER

The above Civil Revision Petition has been filed against the order dated 21.06.2024 made in IA.No.3 of 2023 in IA.No.2 of 2019 in OS.No.30 of 2019 on the file of the District Munsif at Ponneri, Thiruvallur District.

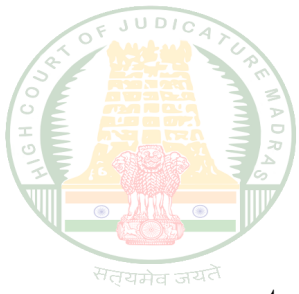
2. The defendant is the revision petitioner before this Court challenging the dismissal of their application seeking to reopen I.A.No.2 of 2019, which was closed by the Court on 08.07.2022 and thereby allow re-survey of the property by reissuing warrant to the Advocate Commissioner to note down physical features. The facts giving rise to this civil revision petition is herein below set out and the parties for ease of understanding are referred to in the same ranking as before the Trial Court.



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3. The plaintiff filed a suit for declaration, recovery of possession and permanent injunction against the Trust. In the said suit an application in I.A.No.2 of 2019 was taken up by the petitioner for appointment of the Advocate Commissioner to note down physical features, measure the western side of the suit A schedule property and to file a report.

4. The petitioner would submit that due to illness the managing trustee was not able to appear and was also not able to meet counsels. That apart, the petitioner's contention is that his counsel had not informed him about the visit of the Taluk surveyor and that the property had been measured. He would submit that the since the property has not been measured in his presence, the same has not been properly measured. Therefore, the petitioner filed an application now the subject matter of the revision.



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5. The respondent / plaintiff had resisted the application by contending that the defendant had encroached into the portion of the petitioner's property and put up construction over the B Schedule property. At the time of constructions by the defendant on the western side of the A schedule property, the respondent had made objections. The petitioner ignoring objections proceeded with construction. Therefore, to prove encroachment the plaintiff made an application to the Tahsildar, Ponneri to find out the encroachment made by the petitioner and also measure the property and gave a report. After the report, the respondent had requested the Trust to remove the encroachment. However, they refused to do so. Therefore, the respondent was compelled to file a suit.

6. The respondent had initially taken out an application for appointing the Advocate Commissioner to measure the property with the help of Taluk Surveyor and the property measured in the presence of both side counsels. When the matter was posted for Trial and after marking of the documents the petitioner had wanted to amicably settle



the issue. However, contrary to the assurance, the petitioner filed the application subject matter of this revision. Further, the petitioner has also suppressed the earlier Advocate Commissioner application filed by the petitioner. One of the main reasons that has been canvassed by the petitioner is that they have not filed their objection to the commissioner's report to I.A.No.2 of 2019.

7. Ultimately, the learned Judge had proceeded to dismiss the said application.

8. Aggrieved by which the petitioner is before this Court.

9. Heard the learned counsel for the petitioner and perused the records.

10. The suit is at the stage of Trial. The records would show that initially the Taluk Surveyor had surveyed the property and submitted his report and the report is made available both to the petitioner as well



C.R.P.(PD).No. 201 of 2025

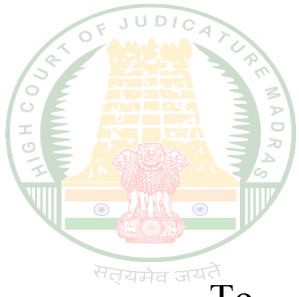
as respondent. Thereafter, it appears that the petitioner have themselves filed an application for appointment of an Advocate commissioner on the very same reasons and the same was dismissed. This has been deliberately omitted to be mentioned by the petitioner. Further, the Taluk surveyor has already inspected and measured the property and identified the encroachments. Therefore, once again seeking reissue to the Advocate Commissioner for undertaking the very same exercise that too when the matter is posted for Trial is a sheer abuse of process of Court.

11. I see no reason to interfere with the order impugned. The Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

05.02.2025

Index : Yes/No
Internet : Yes/No

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C.R.P.(PD).No. 201 of 2023

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The District Munsif at Ponneri,
Thiruvallur District.



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P.T. ASHA, J,

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