

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2016

CORAM

**THE HON'BLE MR. JUSTICE T.MATHIVANAN**

**C.R.P (PD) No.4081 of 2013**

**&**

**M.P.No.1 of 2013**

1.Tmt.Kamalaveni

2.Mr.Arul

... Petitioners

**Vs.**

Syed Mohamed Rowther

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decree dated 21.08.2013 and made in I.A.No.220 of 2013 in O.S.No.86 of 2009 on the file of the District Munsif Court, Thiruthuraipoondi.

For Petitioners : Dr.G.Krishnamurthy

For Respondent : Mr.A.Ilango

**ORDER**

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The fair and decretal order dated 21.08.2013 and made in the application in I.A.No.220 of 2013 in the suit in O.S.No.86 of 2009 are under challenge in this revision. The revision petitioners herein are the plaintiffs in the suit in O.S.No.86 of 2009, whereas the respondent is the defendant.

2. It is apparent from the records that the revision petitioners have filed the above suit as against the respondent herein and thereby sought the relief of declaration and also for the consequential relief of injunction. This suit was resisted by the respondent by filing the written statement.

3. During the pendency of the suit, the revision petitioners had taken out an application in I.A.No.220 of 2013 under Order 26 Rule 9 of the Code of Civil Procedure to appoint an Advocate Commissioner to measure the suit property with the assistance of a surveyor and to file a detailed report along with a plan. This petition was contested by the respondent by filing his counter statement. After hearing both sides, the trial Court had proceeded to dismiss the petition, on the ground that the appointment of Commissioner with the help of the surveyor in order to collect the evidence on the side of the petitioner/plaintiff cannot be allowed at this stage. Having been aggrieved by the impugned order dated 21.08.2013, the petitioners, being the plaintiffs, stand before this Court with this revision.

4. It is to be noted that earlier the petitioners had filed a petition in I.A.No.380 of 2009 under Order 26 Rule 9 of the Code of Civil Procedure for the very same purpose. A commissioner was appointed and after visiting the suit property, he had filed his detailed report along with the plan. Admittedly, the petitioners/plaintiffs had not chosen to file any objection to the earlier Commissioner's report. Subsequently, another application

happened to be filed by them in I.A.No.456 of 2010 to reissue the commission. That was also dismissed against which a revision petition in C.R.P.No.1030 of 2011 was filed by the revision petitioners, which was also dismissed by this Court. Again without minding this fact, they have filed this petition in I.A.No.220 of 2013 for the appointment of Advocate Commissioner to measure the property with the assistance of a Taluk Surveyor.

5. Though Dr.G.Krishnamurthy, learned counsel for the petitioners has justified his argument saying that the revision petitioners were right in filing the petition, this Court finds that the act of the petitioners is nothing but an abuse of process of Court as well as law. As argued by Mr.A.Ilango, learned counsel appearing for the respondent, the petitioners had never chosen to file their objection to the Commissioner's report filed in I.A.No.380 of 2009. Thereafter, they proceeded to file another application in I.A.No. 456 of 2010 to re-issue the warrant, which was also dismissed and the revision which was filed challenging the order passed in I.A.No.456 of 2010 was also dismissed confirming the order of the trial Court. But, in spite of this, they have chosen to file this revision, which according to this Court is liable to be dismissed.

6. In the affidavit filed in support of the petition, the petitioners have stated that after filing the commissioner's report in the first application in I.A.No.456 of 2010, the respondent/defendant had proceeded with the construction of a wall in the suit land and for this reason, they have filed the

present application to appoint an Advocate Commissioner to measure the property and also to note down the physical features of the suit land particularly to note the construction made by the respondent in the suit land. They have admitted the fact that the revision petition in C.R.P.No.1030 of 2011 was dismissed by this Court with an observation that if the petitioners succeed in the suit for declaration stating that they are getting right over the suit property, then they would get all reliefs and also the relief of mandatory injunction, which they have sought for. While dismissing the revision petition in C.R.P (PD) No.1030 of 2011, a learned Judge of this Court has observed in Paragraph No.7 as under:

*"Even otherwise, if the petitioners succeeds in the suit for declaration that they got right over the suit property, then they will get the said relief and also the relief of mandatory injunction which they sought for. Already some constructions have been put up in the pathway and if more constructions have been put up, even then the same could be removed if the petitioners succeed in the suit. For that purpose, the revisit of the Advocate Commissioner is not necessary."*

7. When this Court has specifically made the above observation, the petition in I.A.No.220 of 2013 seeking appointment of an Advocate Commissioner for the very same purpose is not maintainable and therefore, this Court finds that the impugned order does not suffer from any infirmity or illegality.

Keeping in view of the above fact, the civil revision petition is dismissed. No costs. Consequently the connected miscellaneous petition is closed.

05.12.2016

Index: Yes/No  
Internet: Yes  
gpa

**To**

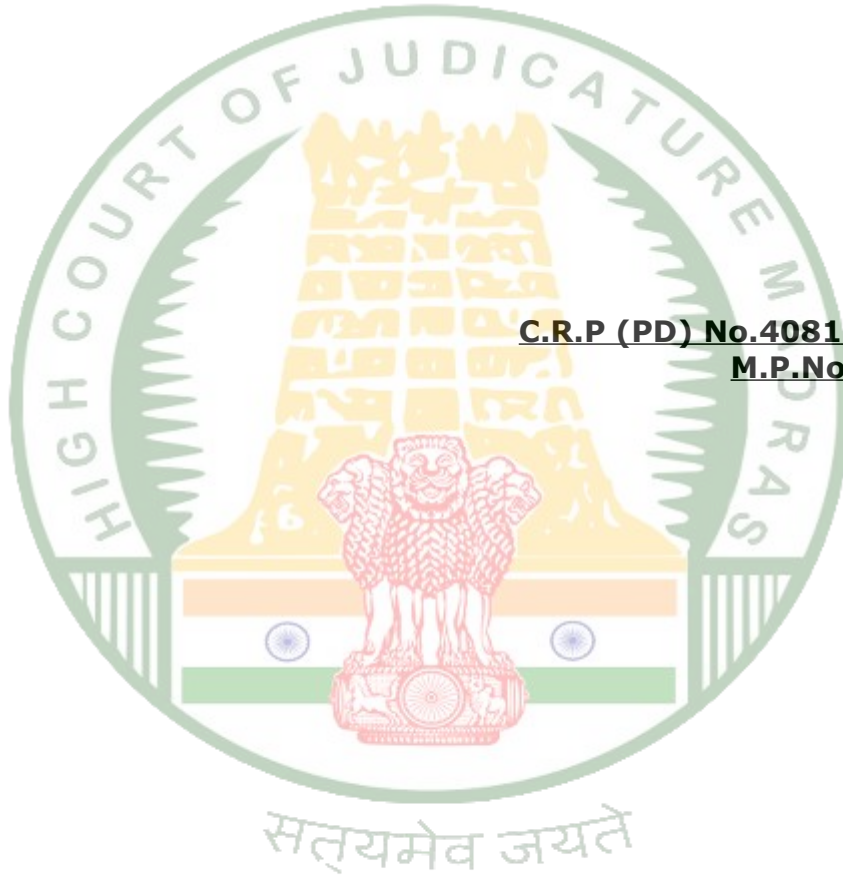
The District Munsif Court  
Thiruthuraipoondi



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**T.MATHIVANAN.J.,**

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