

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (NPD) No.1761 of 2014

1. Easwari Ammal
2. Balasubramanian

.. Petitioners

Versus

Katharipulam Panchayat
Represented by its President,
Katharipulam Village,
Vedaranyam Taluk,
Nagapattinam District

.. Respondent

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside the fair and final order of District Munsif cum Judicial Magistrate Court, Vedaranyam, dated 11.09.2013 made in E.P. No.33 of 2008 in O.S.No.100 of 2006 and allow the said application

For Petitioners : Mr. S.Sounthar
For Respondent : No appearance

ORDER

The petitioner has filed the suit in O.S.No. 100 of 2006 before the District Munsif Court, Nagapattinam praying for grant of permanent injunction restraining the respondents, their servants or employees from in any way interfering with the peaceful possession and enjoyment of the suit property enjoyed by them, either by laying road or by way of any other interference.

Pending suit, the petitioner has filed an application in I.A.No.164 of 2006

before the District Munsif Court, Nagapattinam for interim injunction against the defendant/respondent herein. By Order dated 28.02.2006, the learned District Munsif, Nagapattinam granted an Ad-interim Injunction. The petitioner has also filed an application in I.A.No.165 of 2006 for appointment of Advocate Commissioner and the same was allowed. The learned Advocate Commissioner inspected the property on 01.03.2006 and submitted a report before the Court below on 13.03.2006. According to the petitioners, the report of the Commissioner has clearly revealed that the respondent laid a road, and thereby violated the interim order passed by the Court below on 28.02.2006. In such circumstances, the petitioners have filed an application (unnumbered) in OS No. 100 of 2006 before the court below praying to punish the respondents for having flouted the interim order passed by the Court below. While so, on 23.08.2006, the suit itself was decreed exparte by the trial court . Thereafter, to execute the decree, the petitioners have filed E.P.No.33 of 2008 before the District Munsif Court, Nagapattinam praying to punish the respondent herein for having laid the road in the suit property on 01.04.2006 and thereby disobeyed the order of injunction granted by the Court and to confine him in Civil Prison. The court below, after hearing parties concerned and on materials, dismissed the said application on 11.09.2013. As against the said order dated 11.09.2013, the present Civil Revision Petition is filed.

stated in the report filed by the Advocate Commissioner, that road work is being progressed and several workers were engaged in laying the road. Subsequently, the suit itself was decreed exparte on 23.08.2006. In spite of the order granting temporary injunction and the decree passed in the suit granting permanent injunction, the respondent has laid the road and therefore he is liable to be punished as contemplated under Order 21 Rule 32 of CPC read with Section 151 of CPC. However, the court below, without any basis, has concluded that the road was laid even before the order of injunction granted by the court below, was served to the respondent, which is contrary to the report of the advocate commissioner.

3. Heard the learned counsel for the petitioner and perused the materials placed before this Court.

4. Even though notice was served on the respondent, none appeared on behalf of the respondent.

5. It is a case of the petitioner that the Court below granted an order of temporary injunction on 28.02.2006 and the road was laid on 01.04.2006 and on that date, the interim injunction was in force. The Advocate commissioner, after inspecting the property submitted his report on 13.03.2006. The report of the advocate Commissioner indicates that he has inspected the property on 01.03.2006. But, on perusal of the records, it is seen that there is no evidence made available by the petitioner to show that the copy of the order dated 28.02.2006 granting interim injunction was served on the respondent, prior to laying the road. Thereafter, the petitioner has filed the execution

petition for the violation of the interim injunction against the respondent seeking for arrest of the respondent after the ex-parte decree passed for permanent injunction. Therefore, in the absence of service of the order of injunction granted on 28.02.2006, on the respondent, the contention of the learned counsel for the petitioner that the respondent has violated the order dated 28.02.2006 cannot be accepted.

6. It is further seen from the records that the petitioner has not impleaded the respondent in his individual capacity, while filing the Execution Petition, under Order 21 Rule 32 of Civil Procedure Code. The said application filed as such, cannot be entertained. Further, the petitioner had raised allegations that the respondent has violated the order of injunction by laying the road while the order of injunction was in force. However, without amending the prayer, the ex-parte decree granted by the Court is unexecutable. The ex-parte decree of interim injunction has been passed without amending the prayer for proper relief in the suit. Further the petitioner has not impleaded the respondent in individual capacity in the execution petition. Therefore, no case is made out to interfere with the order passed by the Court below. Hence, Civil Revision Petition fails and the same is dismissed. No costs.

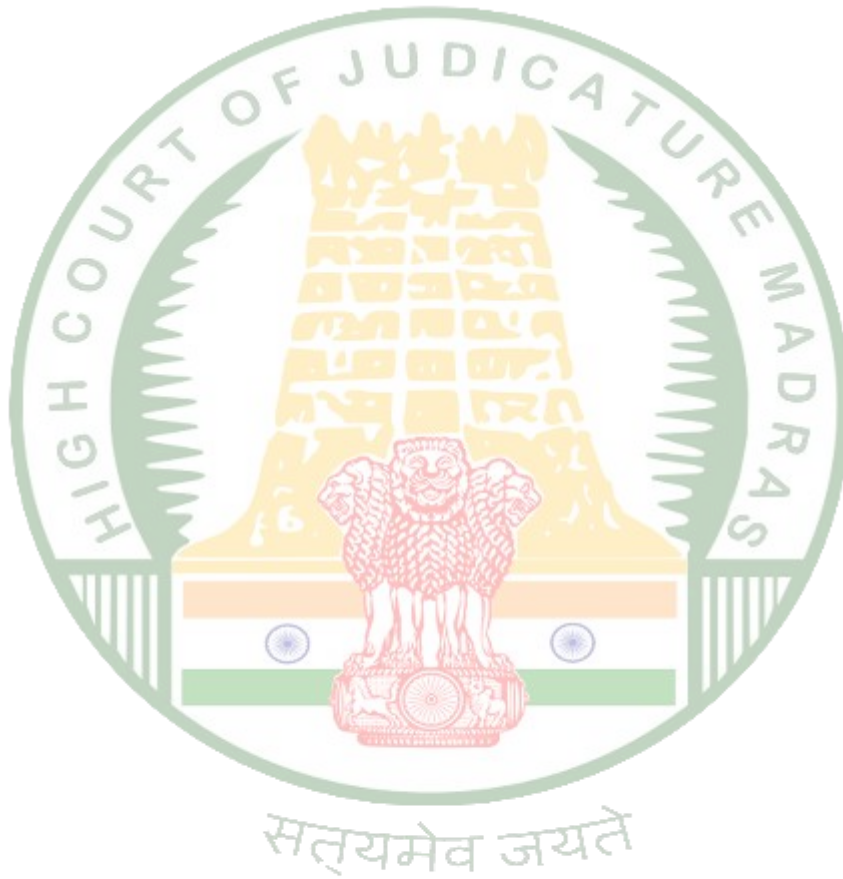
09.06.2017

Index : Yes / No

<http://www.judis.nic.in> Internet : Yes / No

Speaking / Non speaking
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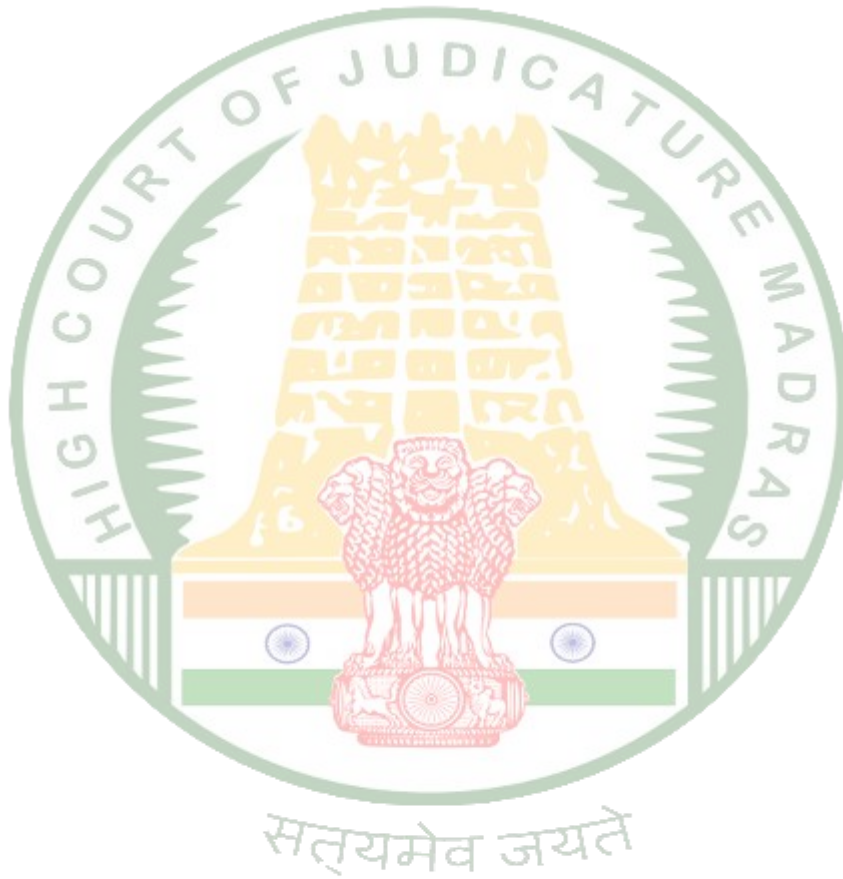
To
The District Munsif cum Judicial Magistrate Court,
Vedaranyam.



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D.KRISHNAKUMAR, J.

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