

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.1010 to 1012 of 2010
& M.P.Nos.1,1 & 1 of 2010

S.A.Rajarathinam .. Petitioner in all C.R.Ps'

Vs.

1. S.A.Dharmalingam
2. Saroja
3. S.A.Mani
4. Duraisamy
5. Periyasamy
6. Arumugam
7. Kandasamy
8. Selvam
9. S.A.Kamalam
10. The Managing Director,
M/S. Perumal Spinning Mill,
Salem- Attur Main Road,
Seshanchavadi, Valapadi Taluk,
Salem District.
11. S.A.Vaithiyalingam
12. S.V.Rajendran

.. Respondents in all C.R.Ps'

Respondents 3 to 12 were set exparte
in the trial Court in the above I.A. Hence,
the respondents 3 to 12 are given up
in the above revision.

PRAYER in all C.R.Ps': Civil Revision Petitions filed Under Article
227 of the Constitution of India, against the fair and decretal orders
dated 04.11.2009 made in I.A.No.113 of 2009, I.A.No.114 of 2009

in I.A.No.1272 of 2008 and I.A.No.115 of 2009 in I.A.No.1273 of 2008 respectively in O.S.No.883 of 2008 on the file of the Principal District Munsif Court, Salem.

(In all C.R.Ps')

For Petitioners : Mr.R.Nalliyappan
For R1 & R2 : No appearance
For R3 to R12 : Given up

COMMON ORDER

These Civil Revision Petitions have been filed against the fair and decreetal orders dated 04.11.2009 made in I.A.No.113 of 2009, I.A.No.114 of 2009 in I.A.No.1272 of 2008 and I.A.No.115 of 2009 in I.A.No.1273 of 2008 respectively in O.S.No.883 of 2008 on the file of the Principal District Munsif Court, Salem.

2. The issue and parties involved in all the civil revision petitions are one and the same and therefore, disposed of by this common order.

3. The petitioner is the first defendant, respondents 1 and 2 are the plaintiffs, respondents 3 to 10 are defendants 2 to 9 and the respondents 11 and 12 are the proposed parties. The

respondents 1 and 2 filed a suit in O.S.No.883 of 2008 against the petitioner and respondents 3 to 10, on the file of the Principal District Munsif Court, Salem, for declaration of title of 1/9th share in the suit cart-track A,B,C,D; permanent injunction, restraining the petitioner and respondents 3 to 10 from interfering with the use of the cart-track A,B,C,D,E,F,G,H,I,J,K,L,M,N,O to reach the respondents' 1 and 2's land in S.No.63/1-3; mandatory injunction, directing the petitioner to remove the three gates G1, G2, G3 and the iron wire fence in the point N, O in the cart-track. The respondents 1 and 2, along with the suit, filed two applications in I.A.No.1272 of 2008 for getting ad interim injunction against the petitioner and tenth respondent from interfering with the peaceful use of the suit cart track and from obliterating the same till the disposal of the suit in O.S.No.883 of 2008 and another I.A.No.1273 of 2008 for appointment an Advocate Commissioner to note down the existence of the suit cart track and its physical features. Pending suit, an Advocate Commissioner was appointed. When he went to measure the suit cart track, the respondents 11 and 12/proposed parties objected the Advocate Commissioner to measure the suit cart track and prevented him from executing warrant of commission. On these averments, the respondents 1 and

2 filed three applications in I.A.No.113 of 2009 for impleading the respondents 11 and 12 as defendants 10 and 11 in O.S.No.883 of 2008, in I.A.No.114 and 115 of 2009 for impleading the respondents 11 and 12 as respondents 3 and 4 in I.A.Nos.1272 and 1273 of 2008 respectively.

4. The petitioner filed counter affidavit and submitted that there is no existence of such cart track, as alleged by the respondents 1 and 2 and proposed parties did not object the Advocate Commissioner from inspecting and measuring the property. Therefore, he contested that the respondents 11 and 12/proposed parties are not necessary and proper parties to the suit, as well as in the two applications filed by the respondents 1 and 2. The respondents 11 and 12/proposed parties did not contest all the three applications and they were set exparte in the same.

5. The learned Judge, considering all the averments made in the affidavit, counter affidavit and the fact that the proposed parties are neighbours and they are proper and necessary parties, allowed the applications.

6. Against the said order dated 04.11.2009 made in I.A.No.113 of 2009, I.A.No.114 of 2009 in I.A.No.1272 of 2008 and I.A.No.115 of 2009 in I.A.No.1273 of 2008 respectively in O.S.No.883 of 2008, the present civil revision petitions are filed by the petitioner.

7. Heard the learned counsel appearing for the petitioner and perused the materials available on record. Though the name of the learned counsel appearing for the respondents 1 and 2 are printed in the cause list, there is no representation either in person or through counsel.

8. The contention of the learned counsel appearing for the petitioner that there is no cart track and there is no cause of action for the relief sought for against the respondents 11 and 12 and therefore, they are not necessary and proper party to suit, is without any merits. The proposed parties are adjacent owner of the suit cart track claimed by the respondents 1 and 2 in the suit. The existence of the said cart track is disputed by the petitioner and others. The respondents 1 and 2 have stated in the affidavit that the proposed parties, who are the owners of western side of the

cart track objected the Advocate Commissioner to inspect and measure the suit cart track. The proposed parties, did not appear before the Court and did not deny the said contention of the respondents 1 and 2. The learned Judge, considering the fact that the proposed parties are adjacent owners and their presence is necessary in the suit, allowed the applications.

9. From the above facts, it is seen that the learned Judge has considered all the materials on record and has given valid reason for allowing the applications. In the circumstances, there is no irregularity or illegality warranting interference with the order of the learned trial Judge, dated 04.11.2009.

10. Accordingly, these civil revision petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

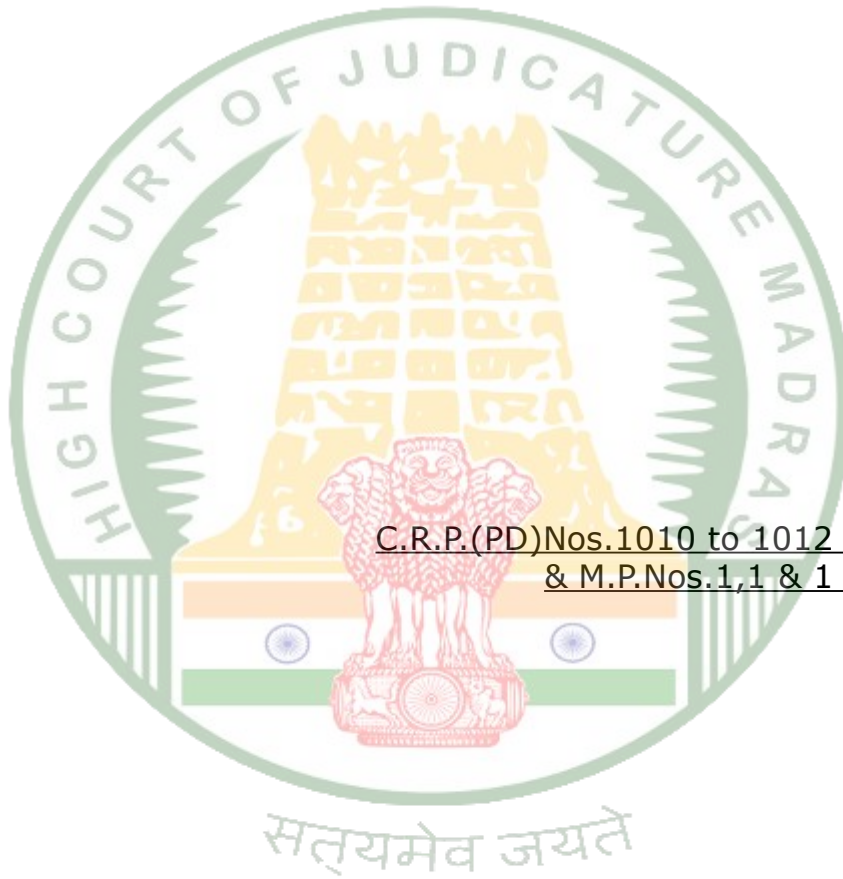
10.08.2017

Index : Yes/No
gsa
To

The Principal District Munsif, Salem.

V.M.VELUMANI, J.

gsa



C.R.P.(PD)Nos.1010 to 1012 of 2010
& M.P.Nos.1,1 & 1 of 2010

WEB COPY

10.08.2017