

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.2456 of 2013
& M.P.No.1 of 2013

1.C.Pongianna Gounder
2.P.Balasubramaniam

.. Petitioners

Vs.

1.K.Murali

2.S.Jabasing Immanuvel

3.State by District Collector,
Erode District
Having office at Perundurai Road,
Erode.

4.The Executive Engineer,
LBP, P.W.D.,
Having Office at Karavaikkal,
Erode – 1.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 28.02.2013 made in I.A.No.960 of 2012 in O.S.No.13 of 2012 on the file of the Principal District Munsif Court, Erode.

For Petitioners

: Mr.S.Kaithamalai Kumaran

For R1 & R2

: Mr.R.Nalliyappan

For R3 to R5

: Mr.M.Venugopal

Special Government Pleader (CS)
ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 28.02.2013 made in I.A.No.960 of 2012 in O.S.No.13 of 2012 on the file of the Principal District Munsif Court, Erode.

2. Heard the learned counsel for the petitioners as well as respondents 1 & 2 and 3 to 5 and perused the materials available on record.

3. The petitioners are plaintiffs, respondents 1 and 2 are the defendants in O.S.No.13 of 2012. The petitioners filed the said suit for declaration, mandatory injunction and permanent injunction. According to the petitioners, the respondents 1 and 2 have put up construction in the cart-track and encroached the Koppu Channel and put up construction. The respondents filed written statement and are contesting the suit. When the suit was posted for trial in the special list, the petitioners filed I.A.No.960 of 2012 under Order 1 Rule 10(2) and Section 151 C.P.C to implead the respondents 3 to 5 as defendants 3 to 5. According to the petitioners, the respondents

1 and 2 put up construction under the cart-track without obtaining the approval from the 5th respondent/The Commissioner, Erode Municipal Corporation and also encroached the Koppu Channel under the control of 4th respondent/The Executive Engineer herein and put up the construction. In view of the same, the proposed parties are necessary and proper party to the suit.

4.The respondents 1 and 2 filed counter affidavit and opposed the said application. According to the respondents 1 and 2, they have obtained approval from the concerned panchayat and put up the construction. The petitioners have no right in the Lower Bhavani Project, koppu vaikkal and hence they have no locus standi to implead the proposed parties and that the proposed parties are not necessary parties. Only to blackmail the respondents 1 and 2, the present petition is filed and prayed for dismissal of the I.A.No.960 of 2012.

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5.The learned Judge, by the order dated 28.02.2013, considering the avements in the affidavit and counter affidavit, dismissed the application, holding that the suit property is in Muthampalayam village which is in hamlet of Kasipalayam

panchayat and only recently, the said panchayat was included within limit of Erode Corporation. The petitioner has not stated the reason for impleading the Commissioner, Erode Corporation as a party to the suit. The petitioner can summon the necessary documents and officials from Erode Corporation to find out whether the respondents 1 and 2 obtained approval for construction or not. The petitioners did not issue notice under Section 80 C.P.C to proposed parties/respondents 3 to 5. Petitioner filed mandatory injunction and did not implead the proposed parties as they are not necessary parties. It is pertinent to note that the petitioners have not impleaded the proposed parties in the application filed by him in I.A.No.960 of 2012 and the petitioners have not made out any case as to how the proposed parties are necessary and proper parties to decide the issue in the suit. There is no change in the circumstances now to implead the proposed parties, as they are not necessary and proper parties. The petitioner have filed application when the suit was included in the special list for trial, only to drag on the proceedings. The learned Judge, considered all the above facts and dismissed the application by giving cogent and valid reason. There is no illegality or irregularity warranting interference with the order of the learned Judge dated 28.02.2013.

6.In the result, this Civil Revision Petition is dismissed.

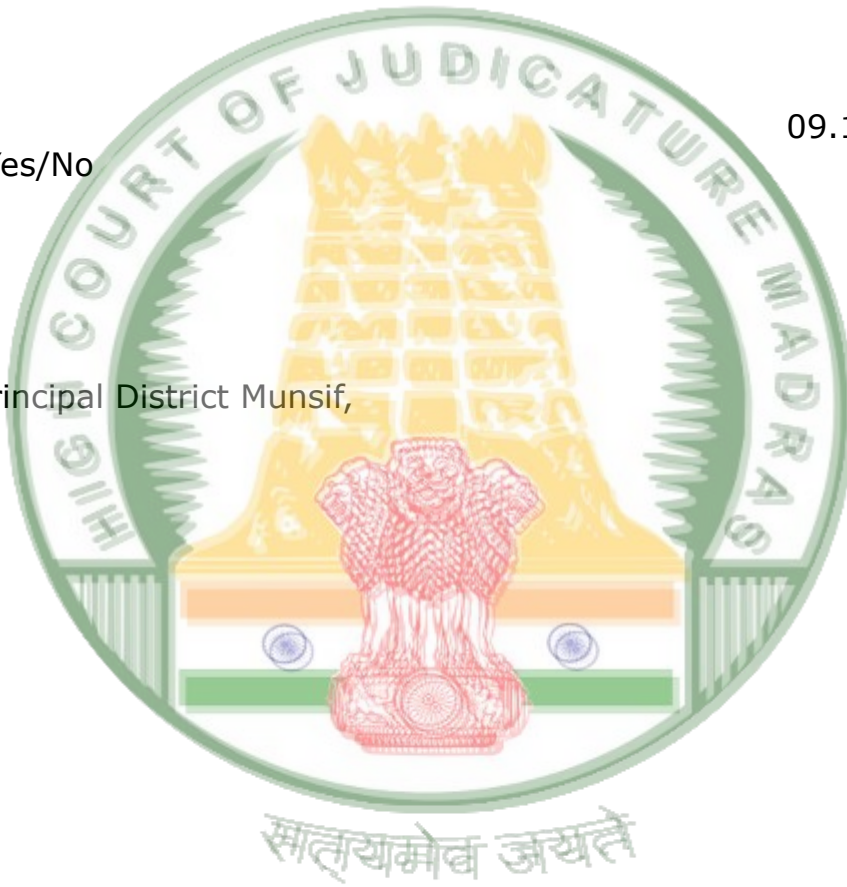
No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
gsa

To

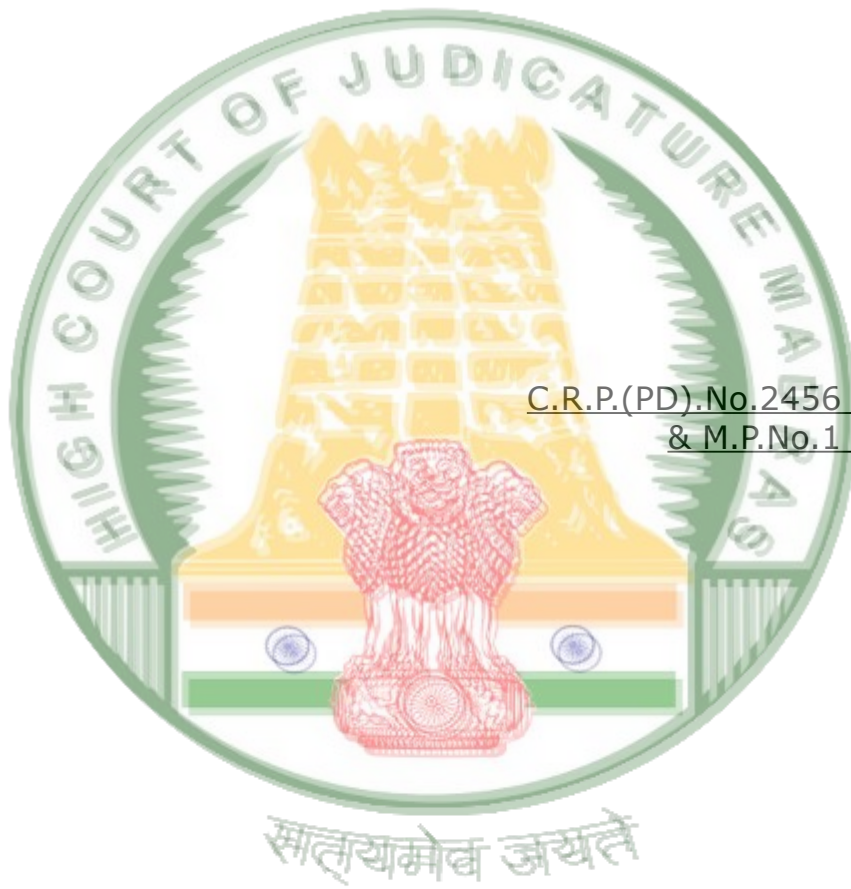
The Principal District Munsif,
Erode.



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V.M.VELUMANI,J.

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