

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.586 of 2015
& M.P.No.1 of 2015

1.Lakshmana Gounder
2.Subramani

.. Petitioners

Vs.

1.K.Chinnasamy
2.The President
Sirukalanji Village,
Erode District.
3.The District Collector,
Erode District.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 21.11.2014 made in I.A.No.651 of 2014 in O.S.No.320 of 2010 on the file of the District Munsif cum Judicial Magistrate, Perundurai.

For Petitioners : Mr.A.Sundaravadhanan

For R1 : Mr.S.kaithamalai Kumaran

For R2 & R3 : No appearance

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 21.11.2014 made in I.A.No.651 of 2014 in

O.S.No.320 of 2010 on the file of the District Munsif cum Judicial Magistrate, Perundurai.

2.The petitioners are the plaintiffs and respondents are the defendants in O.S.No.320 of 2010 on the file of the District Munsif cum Judicial Magistrate, Perundurai. The petitioners filed the said suit against the respondents for mandatory injunction directing the 1st respondent to remove the constructions made by him encroaching upon the 'B' Schedule suit cart track as found by the Advocate Commissioner and for a permanent injunction restraining the 1st respondent from interfering with their peaceful possession and enjoyment of the suit schedule property. The petitioners filed I.A.No.1120 of 2010 for appointment of Advocate Commissioner. The said application was allowed. The Advocate Commissioner was appointed and he filed his report on 25.03.2011. The respondents filed written statement on 01.04.2011. Trial commenced. The petitioners examined P.Ws.1 and 2. The petitioners filed I.A.No.651 of 2014 under Order XVI Rule 1 (2) and Section 151 of C.P.C to issue summons to the Advocate Commissioner who was appointed in I.A.No.1120 of 2010 and Surveyor who assisted the Advocate Commissioner in the inspection. According to the petitioners, after inspection, the Advocate Commissioner filed report on 25.03.2011.

To prove the encroachment of the respondents, oral evidence of the Advocate Commissioner and Surveyor are necessary.

3.The first respondent filed counter affidavit and submitted that petitioners have not filed any objection to the report of the Advocate Commissioner. The report of the Advocate Commissioner and plan are marked and they form part of the records. The petitioners have not stated the facts which are to be clarified by the Advocate Commissioner and prayed for dismissal of the application.

4.The learned Judge, by the order dated 21.11.2014, dismissed the application on the ground that the petitioners did not file any objection to the report of the Advocate Commissioner.

5.Against the said order of dismissal dated 21.11.2014 made in I.A.No.651 of 2014 in O.S.No.320 of 2010, the present Civil Revision Petition is filed by the petitioners.

6.Heard the learned counsel for the petitioners as well as the first respondent and perused the materials available on record.

7. In the suit filed by the petitioners, an Advocate Commissioner was appointed in I.A.No.1120 of 2010. He has inspected the suit property and measured the same with the help of Surveyor and filed his report on 25.03.2011. As per Order XXVI Rule 9, a party to the suit is entitled to examine the Advocate Commissioner. There is no provision in the C.P.C which says that only when the party files objection to the report of the Advocate Commissioner, they are entitled to examine the Advocate Commissioner. The reason given by the learned Judge for dismissing the application that petitioner has not filed any objection to the Advocate Commissioner's report is not a valid reason. In view of the above facts, the impugned order of the learned Judge is liable to be set aside and is hereby set aside. I.A.No.651 of 2014 is allowed.

8. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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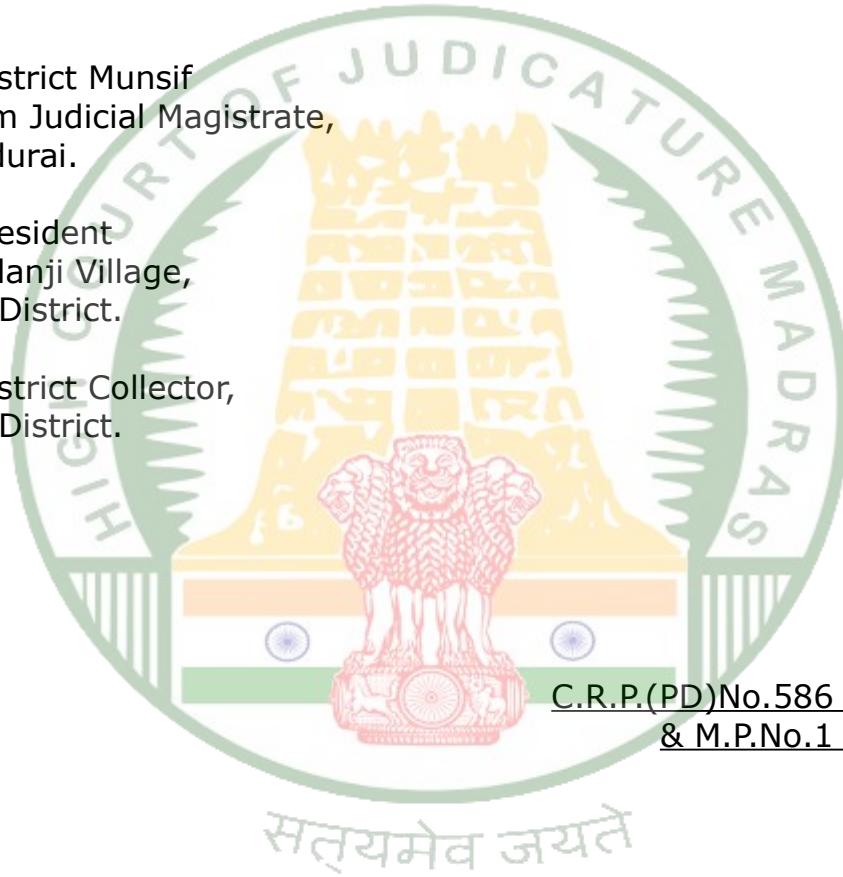
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V.M.VELUMANI,J.

gsa

To

- 1.The District Munsif
cum Judicial Magistrate,
Perundurai.
- 2.The President
Sirukalanji Village,
Erode District.
- 3.The District Collector,
Erode District.



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