

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Civil Revision Petition (PD) No.405 of 2018 and
C.M.P.No.2206 of 2018

1.Arumugam
2.Adimoolam
3.Ramajeyam
4.RAmadoss
5.Thirupathi

... Petitioners

Vs

Ramu

..Respondent

Prayer:- This Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order in I.A.No.96 of 2017 in O.S.No.178 of 2015 on the file of the learned District Munsif, Harur, Dharmapuri District dated 19.12.2017.

For Petitioners : Mr.K.Thiruvengadam

ORDER

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The Civil Revision Petition is against the petitioners' request for appointment of Advocate Commissioner to note down the physical features of the suit property, which includes pathway.

2. According to the learned counsel for the petitioners, the respondent herein has denied the right of the petitioners to use the alleged pathway and as such, it necessitated the petitioners to file the present Interlocutory Application for appointment of Advocate Commissioner. The trial Court by observing that the appointment of Advocate Commissioner in a suit for declaration, is only for the purpose of collection of evidence and that since, the respondent herein has not denied the existence of the alleged pathway in the suit property, appointment of Advocate Commissioner is not warranted.

3. I do not find any infirmity in the order passed by the trial Court. The prayer sought for in the present Interlocutory Application for appointment of Advocate Commissioner is only, for the purpose of noting down the physical features of the suit property. The insertion of a Clause in the prayer, that the measurement of the suit property was also sought for, is opposed by the respondent since, the same does not found place in the decree. Even assuming that the application is for noting down the physical features as well as measurement of the suit property, I am unable to appreciate as to how the necessity for a Commissioner's report would arise in a circumstance where the pathway is not under dispute and the suit is one for declaration of title and for permanent injunction. As such, the observation of the trial Court

that in the absence of the dispute regarding the pathway and that the report of the appointment of Advocate Commissioner would amount to collection of evidence, may be proper.

4. In the light of the above observation, I do not find any infirmity in the order of the trial Court. Accordingly, the Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

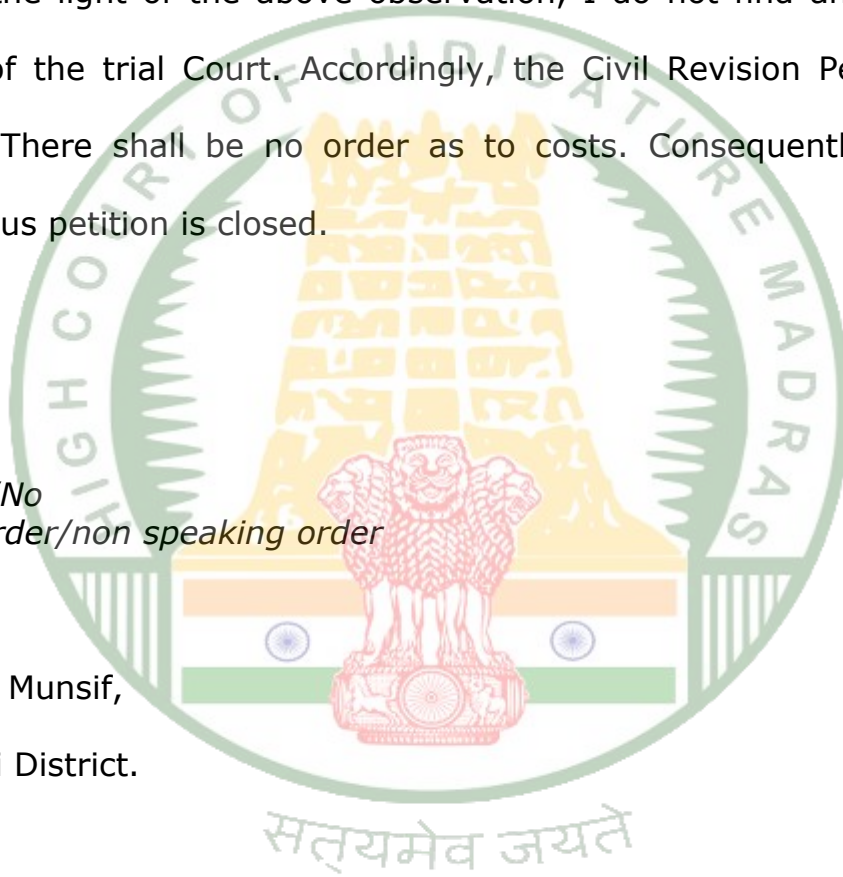
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*Index: Yes/No
Speaking order/non speaking order*

To

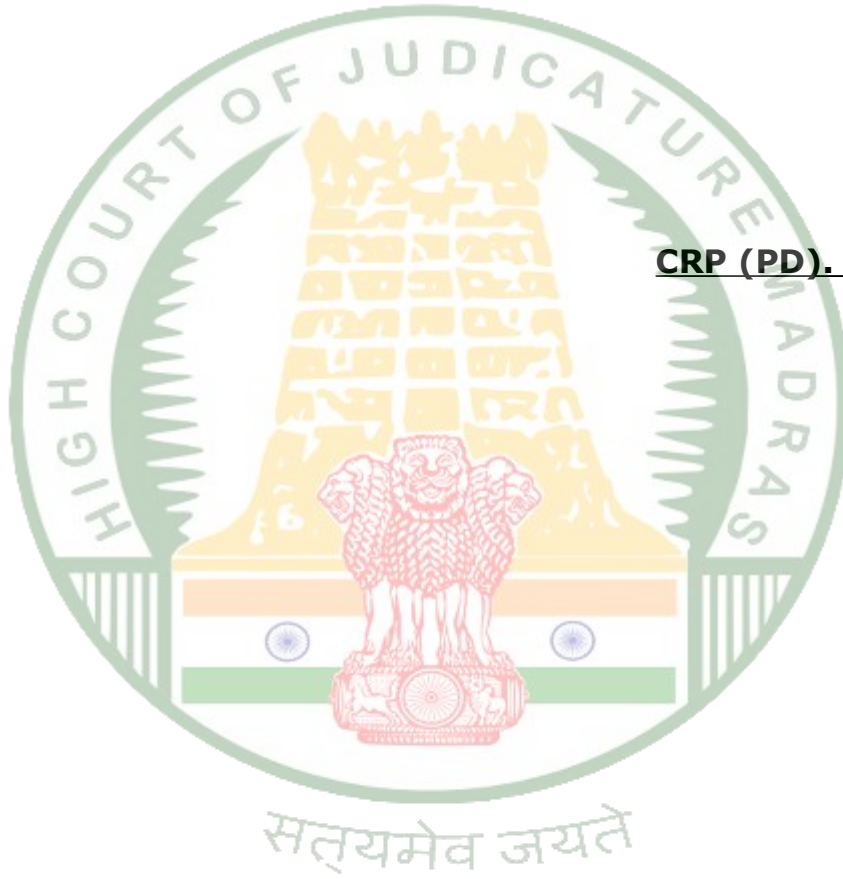
The District Munsif,
Harur,
Dharmapuri District.



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M.S.RAMESH.J.,

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