

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD).No.3998 of 2016

and

CMP.No.20210 of 2016

Premkumar

.. Petitioner

Vs.

A.Pushpam

.. Respondent

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India against the petition and order dated 28.09.2016 made in un-numbered in I.A.No. Nil of 2016 in O.S.No.77 of 2011 on the file of the Subordinate Judge of the Nilgiris at Udhagamandalam.

For Petitioner : Mr.M.Rajasekhar

For Respondent : Mrs.A.L.Ganthimathi

\* \* \* \* \*

ORDER

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This Civil Revision Petition is filed to set aside the petition and order dated 28.09.2016 made in un-numbered I.A.No. Nil of 2016 in O.S.No.77 of 2011 on the file of the Subordinate Court, The Nilgiris at

Udhagamandalam.

2.The respondent herein filed a suit in O.S.No.77 of 2011 on the file of the Subordinate Court, The Nilgiris at Udhagamandalam for permanent injunction restraining the petitioner from interfering into his peaceful possession and enjoyment of the suit schedule property and directing the defendant to pay unto the plaintiff the cost of the suit. The respondent filed an Interlocutory Application in I.A.No.332 of 2011 for appointment of Court Commissioner, for the purpose of ascertaining the value of the damages caused to her compound wall on the northern side of her property. The petitioner filed a detailed counter statement in the above said application and written statement in the suit. In the counter statement in I.A.No.322 of 2011, the petitioner has stated that in the event of the Court Commissioner being appointed, he may also be directed to measure the distance between petitioner's new construction and the northern side compound wall of the respondent property, locate and demarcate the land admeasuring 325 sq.ft. referred in the said I.A. Petition and the plaint, as per deed of agreement of right of way, dated 27.05.1987 registered as document number 873 of 1987 in the office of

the Sub-Registrar of Coonoor (marked as Ex.33 in I.A.No.258 of 2011). He has also stated that the assignment of the aforesaid work to the Commissioner is absolutely necessary in the interest of justice and for complete adjudication of the case.

3.The petitioner have filed a petition in I.A.No.402 of 2012 to review the order dated 12.03.2012, incorporating the directions to this Court Commissioner to carryout the aforesaid assignments and permit the petitioner to submit memo of instructions to the Court Commissioner at the time of his inspection. The above said application was allowed by this Court on 03.12.2012.

4.The petitioner filed an un-numbered petition in I.A.No.Nil of 2016 in O.S.No.77 of 2011 under Order XXVI Rule 9 r/w Section 151 of the Code of Civil Procedure praying to appoint a Court Commissioner with a help of a qualified surveyor to locate and demarcate the land admeasuring 225 sq. ft. referred in the injunction application and the plaint as per the deed of assignment of right of way, dated 27.05.1987 registered as Document Number 873 of 1987 in the office of the Sub-

Registrar of Coonoor. The said un-numbered I.A.No.Nil of 2016 filed by the petitioner is rejected as not maintainable. Challenging the same, the present Civil Revision Petition is filed.

5.In the light of the judgment reported in **2016 (5) CTC 329** in the case of **G.V. Vanitha Vs. K.Dhanasekaran**, wherein the paragraphs 13 and 14 are extracted here under:

*13. On a perusal of the order passed by the Rent Controller, I am of the considered view that the findings given by the Rent Controller cannot be disputed. The Rent Controller had considered all the aspects and rejected the application. The only infirmity in the order is that the parties were not given an opportunity to put forth their case. In spite of filing an affidavit of undertaking before the Apex Court stating that the second petitioner will not induct any third party in the property, the third party petitioners have filed the application under Order 21 Rule 96 to 100 of Civil Procedure Code, claiming right over the property. The Rent Controller should have numbered the application and given an opportunity to put forth their case. The Rent Control Appellate Authority had also rightly observed that the Rent Controller could have passed similar order after giving opportunity to both sides.*

14. The order of the Rent Controller is liable to be set aside only on the ground that the application was not numbered and opportunity was not given to the parties to put forth their case. In these circumstances, the order passed by the Rent Control Appellate Authority remanding the matter for numbering the application and giving opportunity to both the parties is just and proper. I do not find any reason to interfere with the order passed by the Rent Control Appellate Authority. The Civil Revision Petition is liable to be dismissed and the same is dismissed. Since the matter is pending for more than twenty five years, I direct the Rent Controller/District Munsif, Alandur to number the application in EASR No.9486/2012 in E.P.No.36/2002 in R.C.O.P.No.30/1997 and pass orders after giving opportunities to both sides within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected MPs are closed."

6.The trial Court has dismissed the application at the un-numbered stage. In the light of the aforesaid decision, this Court is inclined to pass the following order:

*The order passed in un-numbered I.A. in*

*O.S.No.77 of 2011 on the file of the Sub Court Nilgiris is set aside and remanded to the Court below to number the Interlocutory Application, if it is otherwise in order and to dispose of the said application, on or before 30.06.2018 on merits and in accordance with law, by providing an opportunity to the parties concerned;*

7. Accordingly, the Civil Revision Petition is allowed with the above direction. Consequently, the connected Miscellaneous Petition is closed. No costs.

27.03.2018

ah

Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

To

The Subordinate Judge of the Nilgiris  
at Udhamandalam.



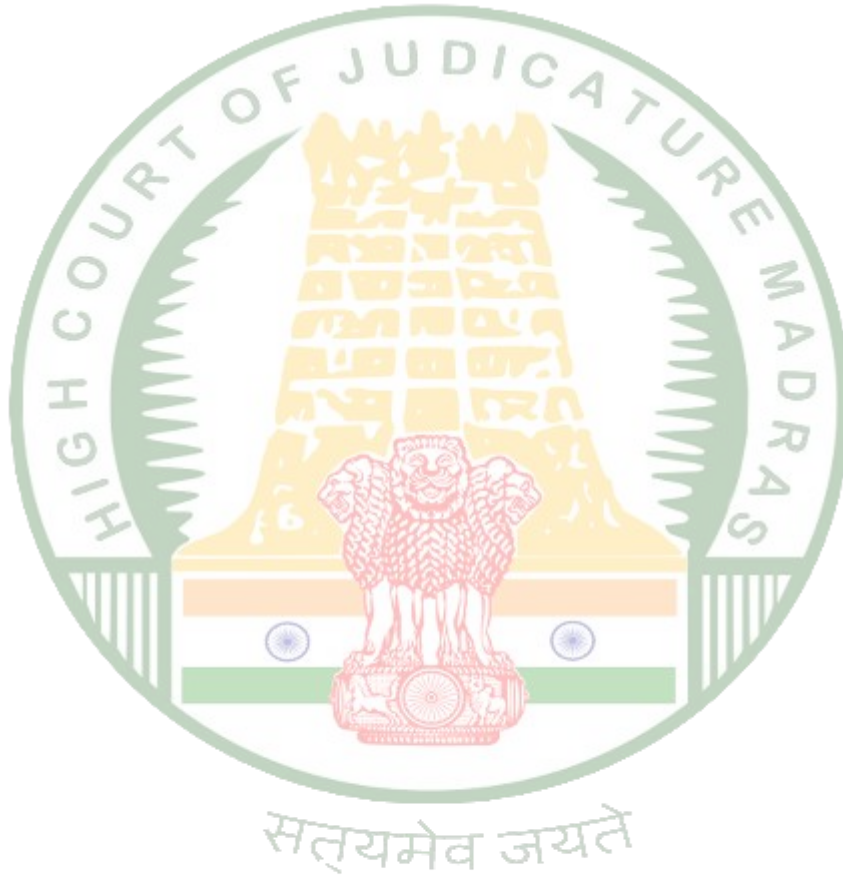
D. KRISHNAKUMAR J.,

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