



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.10.2018

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

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C.R.P. (MD) .Nos.1705 & 1706 of 2018 and
C.M.P. (MD) No.7355 of 2018

Sekar

... Petitioner/Petitioner/
Plaintiff in both petitions**Vs.**

1. Muthukaruppan

2. The Didakottai Group
Village Administrative Officer,
Puliyal Village,
Devakottai Taluk,
Sivagangai District.3. The Thasildar,
Devakottai Taluk,
Sivagangai District.4. The Revenue Divisional Officer,
Devakottai Taluk,
Sivagangai District.5. The District Collector,
Sivagangai District,
Sivagangai.... Respondents/Respondents/
Defendants in both petitions

COMMON PRAYER : Civil Revision Petitions are filed under Article 227 of the Constitution of India, to call for the records in fair and decreetal orders dated 07.04.2017 passed in I.A.Nos.940 and 941 of 2016 in O.S.No.50 of 2015 by the District Munsif Court, Devakottai and set aside the same.

(in both petitions)

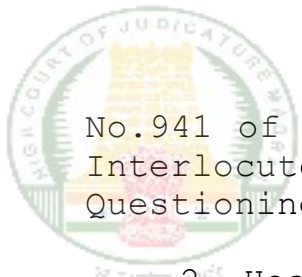
For Petitioners: Mr.V.Perumal

For R-4 : Mr.M.Karuppasamy,
Government Advocate.

For R-1 & R-2 : No appearance.

C O M M O N O R D E R

The plaintiff in O.S.No.50 of 2015 on the file of the District Munsif, Devakottai, is the Revision petitioner herein. It is a suit for declaration, permanent injunction and mandatory injunction. In the said suit, the Revision petitioner filed I.A.



No.941 of 2016 for appointing an Advocate Commissioner. The said Interlocutory application was dismissed by the Court below. Questioning the same, C.R.P.(MD)No.1706 of 2018 has been filed.

2. Heard the learned counsel on either side.

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3. The Court below has observed that there is a connected suit in O.S.No.111 of 2014 filed by the respondents herein. In the said suit, an Advocate Commissioner was appointed and his report is as a part of the record. Therefore, the Court below has taken the view that there is no need to appoint one more Advocate Commissioner.

4. I am of the view that this reason assigned by the Court below is clearly not sustainable in law. The suit schedules in O.S.No.111 of 2014 and O.S.No.50 of 2015 are not one and the same. In fact they pertain to different survey numbers. Therefore, the very foundation of the reasoning set out in the impugned order goes.

5. The suit has been filed claiming the right of common path way. It is further urged that the same has been encroached and the relief of mandatory injunction has also been sought. In order to elucidate the matters in dispute, it is only appropriate to have the suit property inspected and report obtained by noting down the physical features. Therefore, the orders impugned in these Civil Revision petitions are set aside.

6. The Civil Revision petitions stand allowed, accordingly. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS-III)

To

The District Munsif, Devakottai.

+ 1 CC TO MR.V.PERUMAL, ADVOCATE IN SR NO.89130

+ 1 CC TO SPECIAL GOVERNMENT PLEADER, IN SR NO.89139

PMU

BU/NM/RP/SAR-III :15.11.2018 : 2P/4C