

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (PD) No.1265 of 2011 &

M.P.No.1 of 2011

Mr.Sivashanmugam

.. Petitioners

Vs.

1. Mr.Balasubramani
2. Mr.Sakthivel
3. Mrs.Jaya Bharathi
4. Mrs.Sampoornam
5. Mrs.Lakshmi
6. Mr.Ramesh
7. Mrs.Vasuki

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal Order dated 02.02.2011 made in I.A.No.651 of 2010 in O.S.No.106 of 2006 on the file of the District Munsif cum Judicial Magistrate, Kodumudi.

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For Petitioner : Mr.Marudhachalamurthy

For Respondents : Mr.V.Ayyadurai

ORDER

This revision has been filed against the dismissal of the application filed under Rule 76 of Civil Rules of Practice to send for FMP and RSR extract from the concerned authorities.

2. The suit itself has been filed for declaration to establish the right of the plaintiff over the suit property, namely the cart track. It is the contention of the defendants in the written statement that there is no such cart track and if such cart track exists the same should have reflected in the revenue records and hence, there is no such cart track.

3. The trial Court has dismissed the application on the ground that the revision petitioner could have obtained those documents under right to information Act and also by applying those records from the Revenue Department.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the entire materials available on record.

5. Though the application for send for the document cannot be sought under Rule 76 of Civil Rules of Practice and appropriate Rule would be Rule 75

Civil Rules of Practice, this Court is of the view that mere quoting of wrong provision of law cannot be a ground to non suit the revision petitioner. Even though the Rule 74 of Civil Rules of Practice also stipulates the condition that only when certified copies sought and denied by the authorities or the same could not be obtained and such provision can be invoked for summoning of the document, I am of the view that procedural aspects need not be given much importance to advance substantial justice.

6. The entire dispute itself is with respect of the right over the cart track. Only if the revenue records are produced before the Court, the same will enable the Court to decide the issue. Hence, the Order of the trial Court is liable to be set aside.

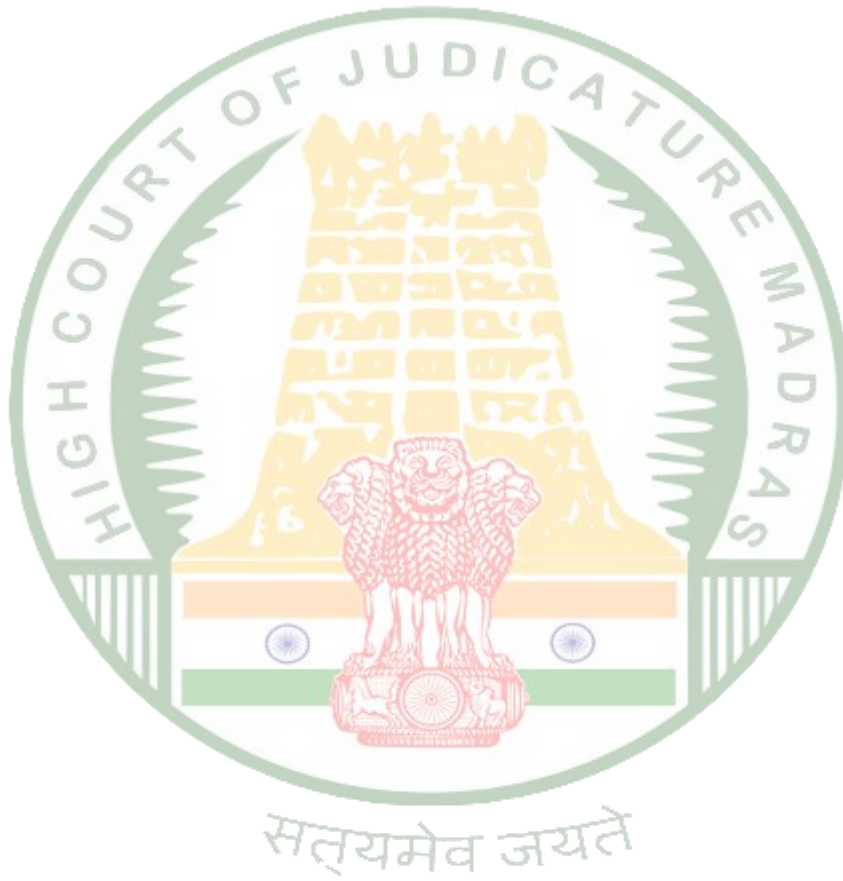
7. Accordingly, this revision is allowed and the Order of the trial Court is hereby set aside. The trial Court shall send for the documents sought in the application from the concerned Department on payment of appropriate fee by the revision petitioner and the trial Court shall thereafter, dispose of the suit in O.S.No.106 of 2006 within a period of 4 months. Consequently, the connected miscellaneous petition is closed. No cost.

08.03.2019

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To

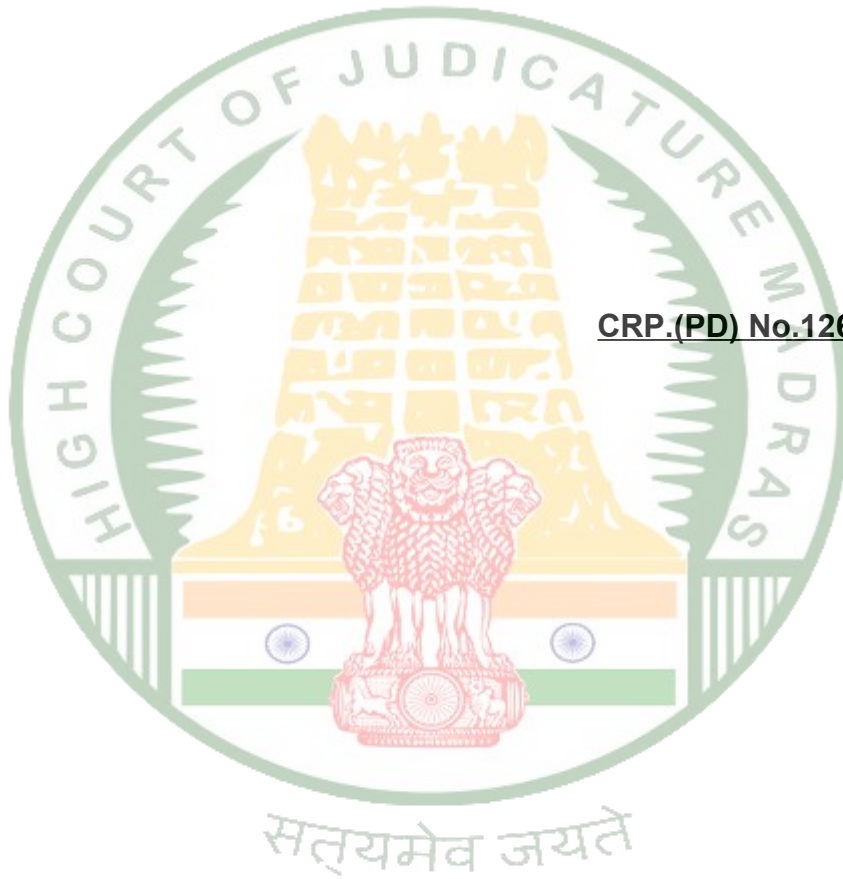
The District Munsif cum Judicial Magistrate,
Kodumudi.



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N.SATHISH KUMAR, J.

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