

IN HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(PD).No.1357 of 2015
and
M.P.No.1 of 2015

1.Sri Suryodhaya Processing Private Limited,
Represented by its Director
Mr.R.Jeganathan,
S/o.R.Raju Naidu,
Door No.1, Roja Nagar,
Kaniravuthar Kulam, Periya Semur Village,
Veerappanchathiram Post, Erode Town,
Erode Taluk, Erode District.

2.R.Jeganathan

3.J.Geetha

4.J.Vishnu Prabhu

... Petitioners

सत्यमेव जयते
vs

1.E.K.Arjunan

2.S.Senthilkumar

3.C.Anadharaj

4.K.Ravichandran

5.V.Kumarasamy

6.S.Deivasigamani

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7.S.Meinathan

8.P.Sathishkumar

9.P.Sellamuthu

10.E.S.Palanisamy

11.E.R.Sivakumar @ Ellapalayam Sivakumar ...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair & decretal order of the Principal Subordinate Judge's Court at Erode, dated 19.02.2015 in I.A.No.778 of 2014 in O.S.No.501 of 2014.

For petitioners : Mr.V.Lakshmi Narayanan
for M/s.C.Meena

For Respondents : Mr.A.K.Kumarasamy

ORDER

The petitioners are aggrieved by the impugned fair and decretal order dated 19.02.2015 passed by the Principal Subordinate Judge, Erode in I.A.No.778 of 2014 in O.S.No.501 of 2014.

2.By the impugned order, the lower court has partly allowed the application filed by the respondents under Order 26 Rule 9 r/w Section 151 of CPC to appoint an Advocate Commissioner to make a

local visit to the suit property, to note down the entire physical features in and around the suit schedule properties and to file a report with a plan.

3.The above suit was filed by the petitioners/plaintiffs for permanent injunction to restrain the defendants/respondents from trespassing and interfering with the peaceful possession and enjoyment of the suit schedule properties. There is dispute regarding the usage of the property in question in the above suit.

4.The respondents/defendants filed I.A.No.778 of 2014 in O.S.No.501 of 2014, to appoint an Advocate Commissioner to make a local visit to the suit properties, to note down the entire physical features in and around the suit properties and to file a report with a plan.

5.According to the respondents, the petitioners' company is running a dyeing unit and was discharging the contaminated water both into the pond, bore well, water course and other sources. In this connection, already proceedings were initiated before the Tamil Nadu Pollution Control Board and the jurisdictional of the National Green Tribunal.

6.By the impugned order, the Court has allowed the application on the ground that noting down the physical feature in and around the suit property would clarify whether the water course like pond, well etc., and the path ways, car track are enjoyed without any hindrance to other persons, when the said aspects are kept in common for respondents/defendants and the petitioners/plaintiffs.

7.Heard the learned counsels for the petitioners and the respondents.

8.The learned counsel for the petitioners submits that the appointing Advocate Commissioner for noting down the physical features to the suit property will not arise. There is no dispute regarding the identity to the suit property and therefore there is no necessity to appoint Advocate Commissioner. The respondents are trying to collect the evidence in the above suit. The respondents/defendants can initiate appropriate proceedings before the concerned statutory authorities but cannot collect evidence.

9.The learned counsel for the petitioners relied on the following decisions:-

- i. **Nagar Mahapalika (now Municipal Corpora) vs State of U.P and Ors**, AIR 2006 SC 2113.
- ii. **R.Vasanthi vs M.Soundararajan**, 2015 (2) CTC 108.
- iii. **Nagesh Datta Shetti and Ors vs State of Karnataka and Ors**, AIR 2005 SC 1550.
- iv. **R.Satyanarayana Rao and 3 Ors vs M.K.Manoharan @ K.Manoharan and Another**, 2000-3-L.W.787.

10.The learned counsel for the respondents relied on the following decisions:-

- i. **B.Amutha vs Anandhi Sankara Narayanan**, 2016 8 MLJ 368.
- ii. **K.S.Palanisamy vs Ramasamy and Ors** passed by this Court in C.R.P.(PD).No.3895 of 2011 dated 17.01.2017.

11.I have considered the arguments advanced by the learned counsels for the petitioners and the respondents.

12.The application filed for appointing an Advocate Commissioner cannot be permitted to collect the evidence. The respondent/plaintiffs are trying to establish the environmental degradation by allegedly discharge of contaminated water both in the pond, bore well, water course and other sources in the suit schedule properties.

13. In case, the respondents are of the view that the petitioners/plaintiffs is indeed polluting water by discharging effluents from their factory, they should initiate appropriate proceedings under the Water (Prevention and Control of Pollution) Act, 1974. Therefore, the order under Order 26 Rule 9 cannot be given to collect the evidence for being used in a collateral proceedings.

14. I am of the view that the respondents/defendants right to establish pollution and contamination of water by discharging of effluent can be agitated only before the appropriate forum under the Water (Prevention and Control of Pollution) Act, 1974 and National Green Tribunal Act, 2010.

15. In view of the above, the Present Civil Revision Petition deserves to be allowed. It is noticed that the suit is of the year 2014. Therefore, the respondents are directed to file their written statement within a period of 30 days from the date of receipt of a copy of this order, in case if the same has not been already filed.

16.The Court shall therefore proceed to dispose the suit in accordance with law within a period of six months from the date of receipt of a copy of this order.

17.In view of the above observations, the present Civil Revision Petition stands disposed. No cost. Consequently, connected Miscellaneous Petition is closed.

22.08.2019

Index :Yes/No
Internet :Yes/No

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To

1.The Principal Subordinate Judge's Court,
Erode.

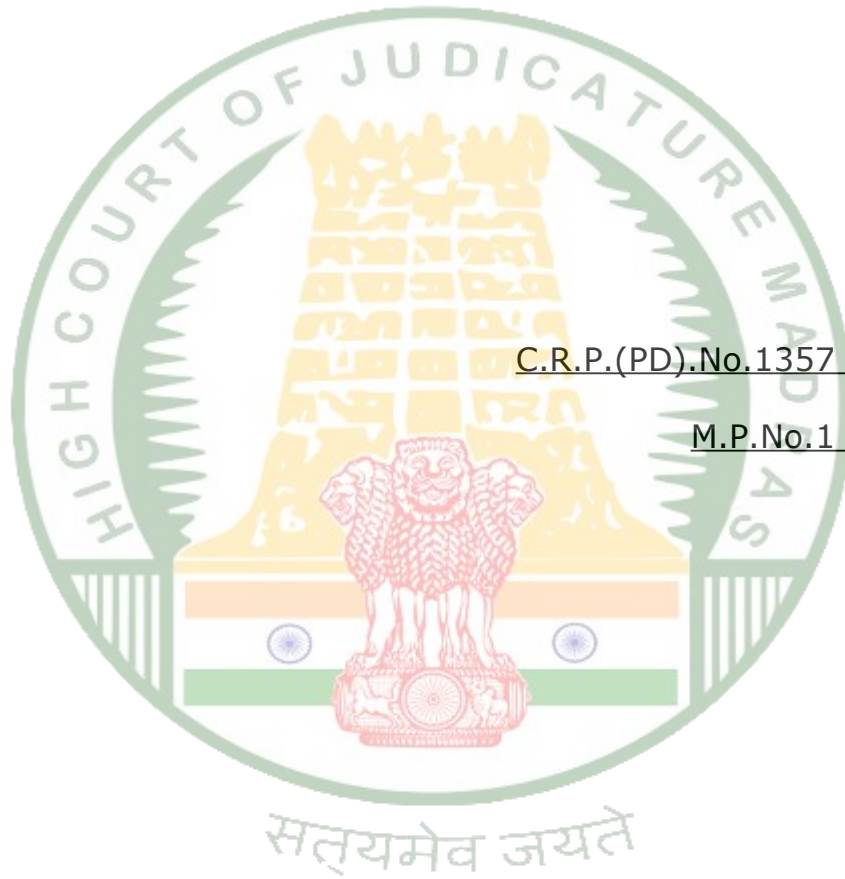
2.The Section Officer,
V.R. Section, High Court, Madras.

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C.SARAVANAN, J.

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