

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP.PD.No.1091 of 2013
and
MP.No.1 of 2013

K.Saravanan

... Petitioner

vs.

1.Faizudeen

2.Sharpunnisha

3.Jeelani

4.Rahamathullah

5.Basheer

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 06.11.2012 passed in IA.No.1229 of 2012 in OS.No.4087 of 2009 on the file of the XVIII Assistant Judge, Civil Civil Court, Chennai.

For Petitioner : Mr.L.Rajasekar

For Respondents : No appearance

ORDER

The civil revision petitioner is the defendant in OS.No.4087 of 2009 on the file of the XVIII Assistant Judge, Civil Civil Court, Chennai. The respondents / plaintiffs sought for a permanent injunction restraining the defendant from putting up any gate in the boundary of the plaintiffs' property and also for a mandatory injunction directing the defendant to remove the sun shade which was erected by him in the plaintiffs' property. The defendant filed his written statement and both the parties went for trial.

2. The respondents / plaintiffs filed an application under Order XXVI Rule 9 of the Code of Civil Procedure in IA.No.11362 of 2010 to appoint an Advocate Commissioner to measure the suit property and to note down its physical features. The civil revision petitioner / defendant filed his counter and after full contest, the said application was allowed by the learned Judge. Accordingly, Mrs.S.Premakumari, Advocate Commissioner inspected the suit property and filed her report. Subsequently, the civil revision petitioner filed another application for a direction to the Advocate Commissioner to re-inspect the suit property in IA.No.1229 of 2012. The said

application was also allowed by the learned Judge. The civil revision petitioner / defendant was directed to pay a sum of Rs.5,000/- (Rupees Five Thousand Only) as Advocate Commissioner's fee on or before 17.09.2012. Since he did not pay the Advocate Commissioner's fee, the petition was dismissed. Aggrieved over the same, the defendant has filed the present Civil Revision Petition under Article 227 of the Constitution of India.

3. Heard the learned counsel appearing for the civil revision petitioner. No appearance on behalf of the respondents.

4. Since certain omissions / commissions by the Advocate Commissioner are pointed out in the petition in IA.No.1229 of 2012, the learned XVIII Judge, City Civil Court, Chennai was right in directing the same Advocate Commissioner to re-inspect the suit property and file her report. However, the said petition was dismissed for non payment of Advocate Commissioner's fee.

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5. Mr.L.Rajasekar, learned counsel appearing for the civil revision petitioner / defendant undertook to pay the Advocate Commissioner's fee

within a period of two months from the date of receipt of a copy of this order. The learned XVIII Assistant Judge, City Civil Court, Chennai is directed to send the Advocate Commissioner once again to inspect the suit property as per the orders passed on 10.09.2012 in IA.No.1229 of 2012, after receiving the Advocate Commissioner's fee from the civil revision petitioner.

6. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

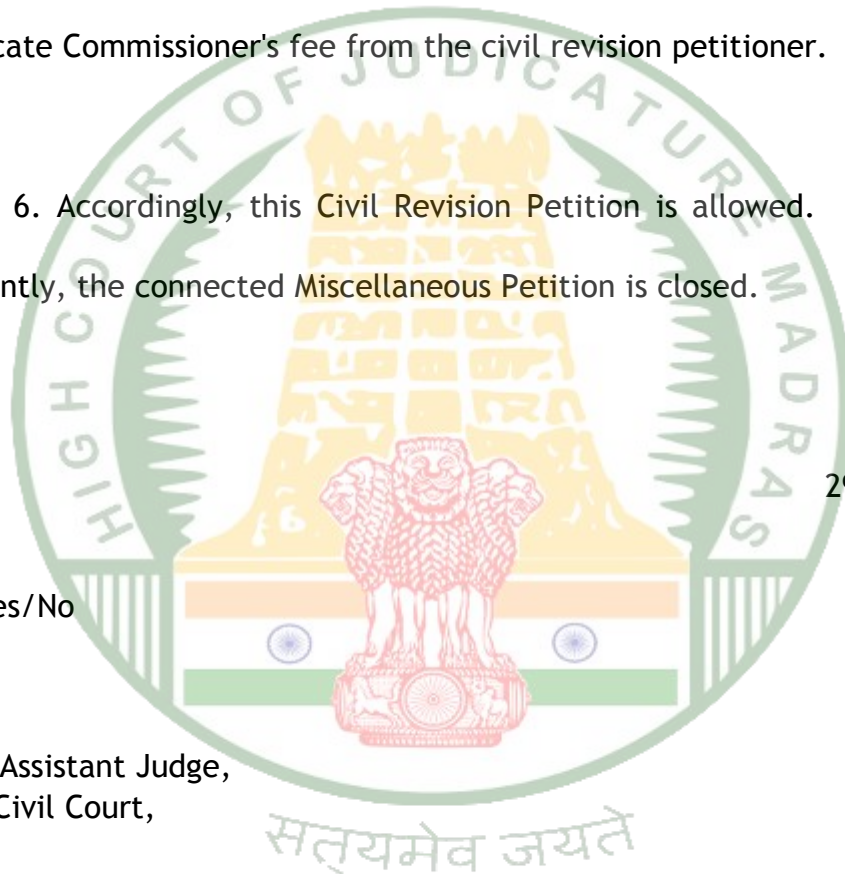
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Index : Yes/No

To

The XVIII Assistant Judge,
The City Civil Court,
Chennai.

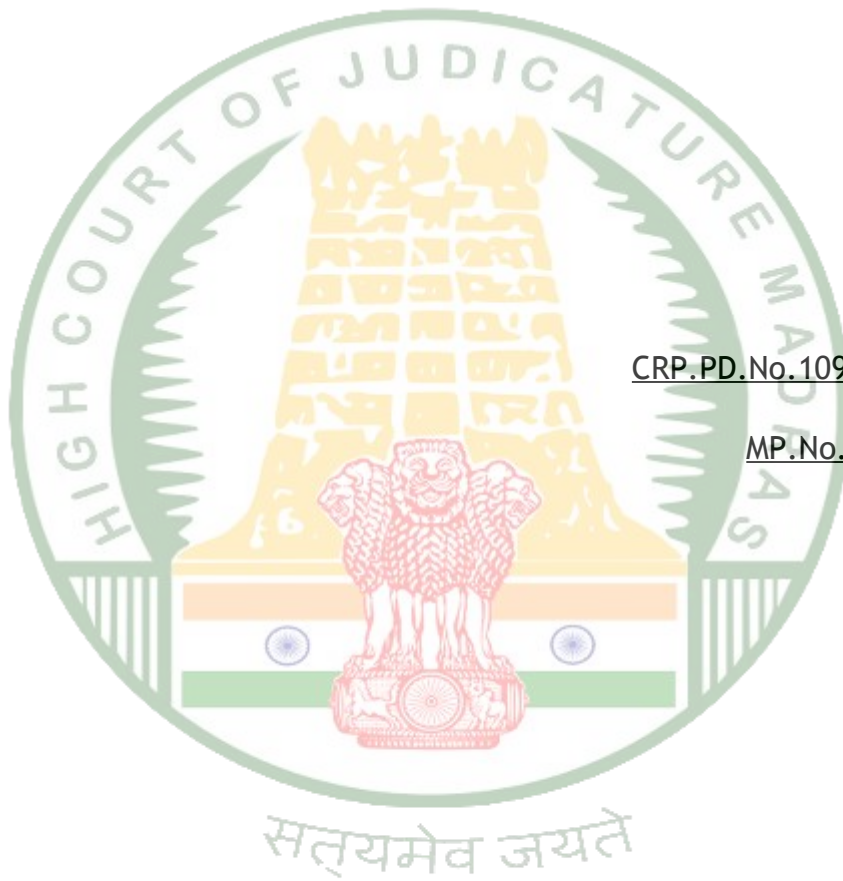


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