

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP(PD).No.1306 of 2013

and

MP.No.1 of 2013

P.Rathinasamy

... Revision Petitioner
/Plaintiff

Versus

1.P.Soundhiram
2.Sivanantham
3.V.Sasikala
4.B.Revathi

...Respondents/Defendants

This Civil Revision Petition has been filed under Section 227 of the Constitution of India, to set aside the fair and decreetal order dated 03.01.2013 made in I.A.No.526 of 2012 in O.S.No.82 of 2010, on the file of the learned District Munsif cum Judicial Magistrate, Kodumudi.

For Petitioner

: Mr.N.Manokaran

For R1

: Mr.M.Guruprasad

For R2 to R4

: No appearance

J U D G M E N T

The Civil Revision Petition has been filed against order dated 03.01.2013 made in I.A.No.526 of 2012 in O.S.No.82 of 2010, on the file of the learned District Munsif cum Judicial Magistrate, Kodumudi.

2 The plaintiff in the suit in O.S.No.82 of 2010 is the revision petitioner herein.

3 The revision petitioner herein/plaintiff has filed the above said suit in O.S.No.82 of 2010, seeking for the relief of declaration of title and for mandatory injunction. Along with the said suit, he has also filed I.A.No.453 of 2010, for appointment of an Advocate Commissioner to inspect the suit property and note down its physical feature and the same was allowed. The Advocate Commissioner has examined the property and also filed his report as early as on 02.09.2011 and thereafter, the plaintiff evidence has been let in and the evidence on the side of the plaintiff was closed. When the matter was posted for recording the evidence on the side of the defendant, the present application was filed in I.A.No.426 of 2012. After contesting, the same was dismissed on the ground that earlier report of Advocate Commissioner was not scraped and hence, appointment of new Advocate Commissioner, that too at the advance state of trial could not be entertained and rejected the relief by dismissing the petition. Hence, the CRP.

4 Mr.N.Manokaran, learned counsel for the petitioner would contend that appointment of Advocate Commissioner is only

to a limited extent that too for fixing the village boundaries. Since, the suit property lies between the boundaries of two villages and the physical features of the suit property is enlightened by the Advocate Commissioner's Report, he will be put to hardship.

5 The learned counsel for the petitioner would rely on the following judgements:

(i) 2013 (1) TNCJ 535 (MAD)(MB) – [M.Ali Baba (D) through Legal Representatives Vs. Selvam Thaol Mehta and Others]

(ii) 2013 (1) TNCJ 472 (MAD)(MB) – [Panjavarnam and Others Vs. Visuvasam Jeyaseeli]

6 The learned counsel for the respondent would contend that at the time of institution of the suit, I.A.No.453 of 2010 was filed. The Advocate Commissioner has filed a Report and the plaintiff has not chosen to file any objection for the said Advocate Commissioner's Report and hence, he cannot raise any objection in support of rising a valid objection and he has chosen to file the I.A. for appointment of new Advocate Commissioner to fix the boundaries of the two villages.

7 Heard both sides and perused the documents placed on record.

8 Though, the petitioner/plaintiff has not filed any objection for the Report of the Advocate Commissioner appointed in I.A.No.453 of 2010, one of the defendant has filed the objection. Further more, from the Report of the Advocate Commissioner, he has expressed his inability to fix the distance between the two village boundaries for want of assistance of Revenue Authorities. The Order 26 of CPC elaborates various situations and the procedures thereof. Since, the petitioner/plaintiff has not filed any application to scrap the existing Report of the Advocate Commissioner, appointment of new Advocate Commissioner does not arise. However, if he is so advised, it is open to him to file necessary application for re-issuance of the warrant to the same Advocate Commissioner. In such circumstances, the Trial Court can consider the matter purely on merits and dispose of the same.

9 The above citations referred by the learned counsel for the petitioner relating to appointment of Advocate Commissioner, at the first instance, are not applicable to the facts of the present case.

10 In the result, the Civil Revision Petition stands dismissed with the above observations and the order dated 03.01.2013, passed in I.A.No.526 of 2012 in O.S.No.82 of 2010, by the learned District Munsif cum Judicial Magistrate, Kodumudi, stands confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

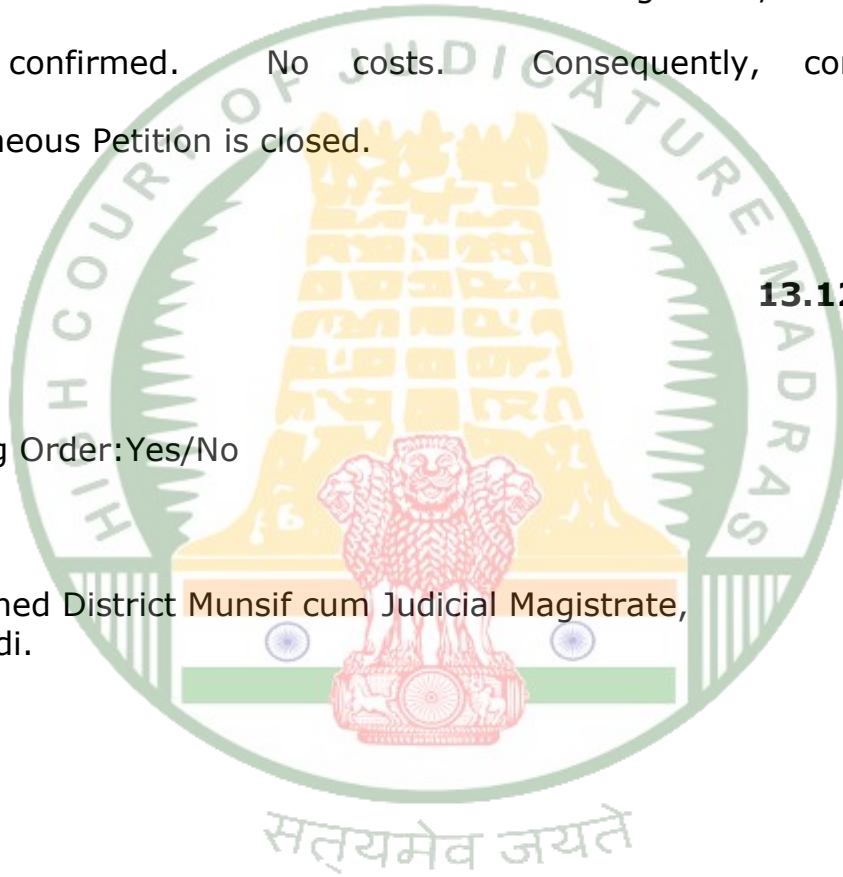
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Speaking Order:Yes/No

To

The learned District Munsif cum Judicial Magistrate,
Kodumudi.

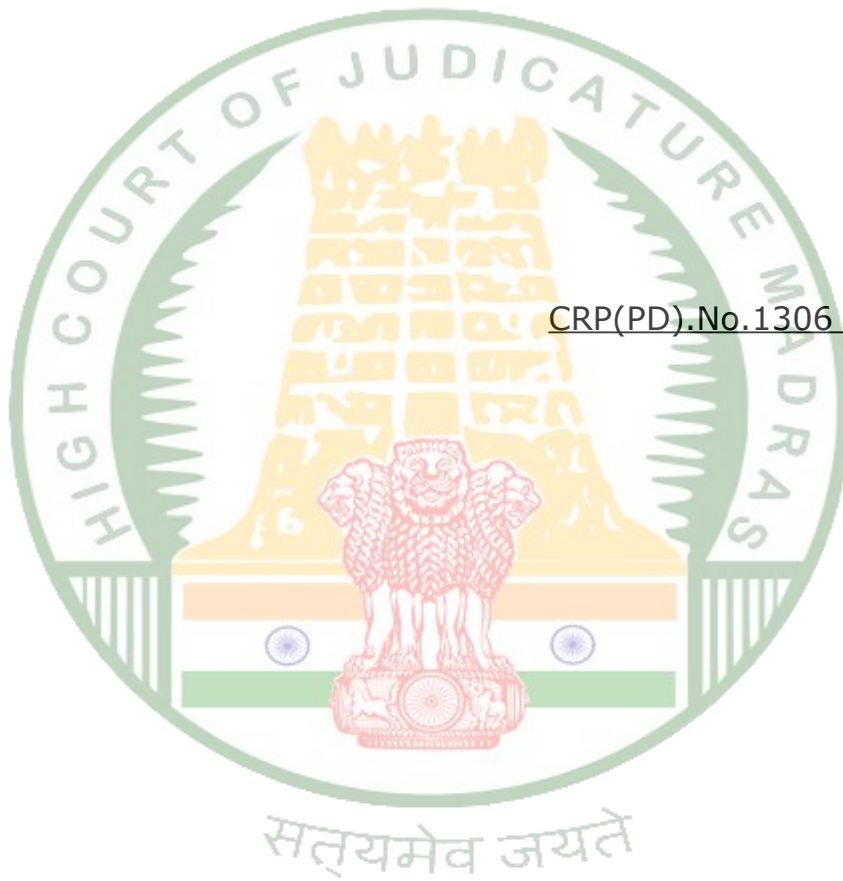


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