

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.08.2019

Coram

The Honourable Mrs.**Justice R.HEMALATHA**

C.R.P.(PD)No.2506 of 2013

and

M.P.No.1 of 2013

Kunjampalayam
Sri Amman Small Agriculturist
Lift Irrigation Society
Rep. by present President K.R.Mani
Omega Private Limited
Karuvadhampatti Bus Stop,
Sankari Road, Tiruchengode,
Namakkal District. ... Petitioner

Vs.

1.Sengodan
2.Kunjampalayam
Sri Amman Small Agriculturist
Lift Irrigation Society
Rep. by present Secretary Periyasamy
Nedungadu
Ettipalayam
Seerapalli Village,
Paramathi Velur Taluk,
Namakkal District. ... Respondents

This Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the fair and decretal orders dated 20.06.2013 passed in I.A.No.409 of 2013 in O.S.No.109 of

2013 by the learned District Munsif cum Judicial Magistrate,
Paramathi.

For Petitioner : M/s.Zeenath Begum

For Respondents : M/s.V.Kiruthika for R-1
No appearance for R-2

ORDER

The present civil revision petition has been filed against the orders dated 20.06.2013 passed in I.A.No.409 of 2013 in O.S.No.109 of 2013 by the learned District Munsif cum Judicial Magistrate, Paramathi.

2.The revision petitioner is the first respondent/first defendant in I.A.No.409 of 2013 in O.S.No.109 of 2013 on the file of the District Munsif cum Judicial Magistrate, Paramathi. The first respondent/plaintiff filed the suit in O.S.No.109 of 2013 for a bare injunction against the present civil revision petitioner as well as the second respondent/second defendant. The first respondent/first defendant filed an application in I.A.No.409 of 2013 under Order XXVI Rule 9 of the Civil Procedure Code praying to appoint an Advocate Commissioner to inspect the suit property and to note

down its physical features. The learned District Munsif cum Judicial Magistrate, Paramathi, after analysing the evidence on record, allowed the said application vide his fair and decreetal order dated 20.06.2013 and appointed Mr.K.Udhayakumar, learned Advocate Commissioner to inspect the suit property and to file his report. Aggrieved over the same, the present civil revision petition is filed.

3.M/s.Zeenath Begum, learned counsel appearing for the revision petitioner contended that the first respondent/plaintiff had filed the main suit only for a bare injunction restraining the civil revision petitioner and the second respondent from interfering with the plaintiff's right to irrigate his lands mainly based on the ground that he is a member of "Kunjampalayam Sri Amman Siru Vivasagal Neertru Pasana Sangam". Her specific contention is that since the matter in issue involved in the suit is as to whether the plaintiff is member of the said sangam and that he can draw water for his lands from the suit well, appointment of an Advocate Commissioner to note down the physical features of the suit property is not necessary for the just decision of the case in O.S.No.109 of 2013.

4.Per contra, M/s.V.Kiruthika, learned counsel appearing for the first respondent/plaintiff contended that no prejudice would be

caused to the civil revision petitioner by appointing an Advocate Commissioner and that the suit is kept pending from the year 2013, as the first defendant has filed the present civil revision petition before this Court.

5.At the outset, it may be observed that the first respondent/plaintiff filed the suit for bare injunction restraining the defendants from interfering with his right to draw water from the well through the motor pumpset situated in Survey No.113/3 of Thidumal Village, Paramathi Sub District, Namakkal District. The main averments in the plaint is that though the first respondent/plaintiff is a member of the first defendant's Society, he has been prevented from drawing water from the well indicated in the suit schedule. Therefore, the plaintiff has to prove that he is a member of the Defendant's Society and that he is entitled to draw water from the suit well. In the circumstances, appointment of an Advocate Commissioner to note down the physical features of the suit property may not be necessary for the just decision of the case and the learned District Munsif cum Judicial Magistrate, Paramathi mainly allowed the application filed under Order XXVI Rule 9 of the Civil Procedure Code by the plaintiff on the ground that by appointing an Advocate Commissioner there would not be any

prejudice to the interest of the other party. Such an observation of the trial Court definitely warrants interference by this Court. In the facts and circumstances, the civil revision petition is allowed. Since the suit is of the year 2013, the learned District Munsif cum Judicial Magistrate, Paramathi is directed to dispose of the suit in O.S.No.109 of 2013 within a period of three months from the date of receipt of a copy of this order.

6. With the above observation, the civil revision petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

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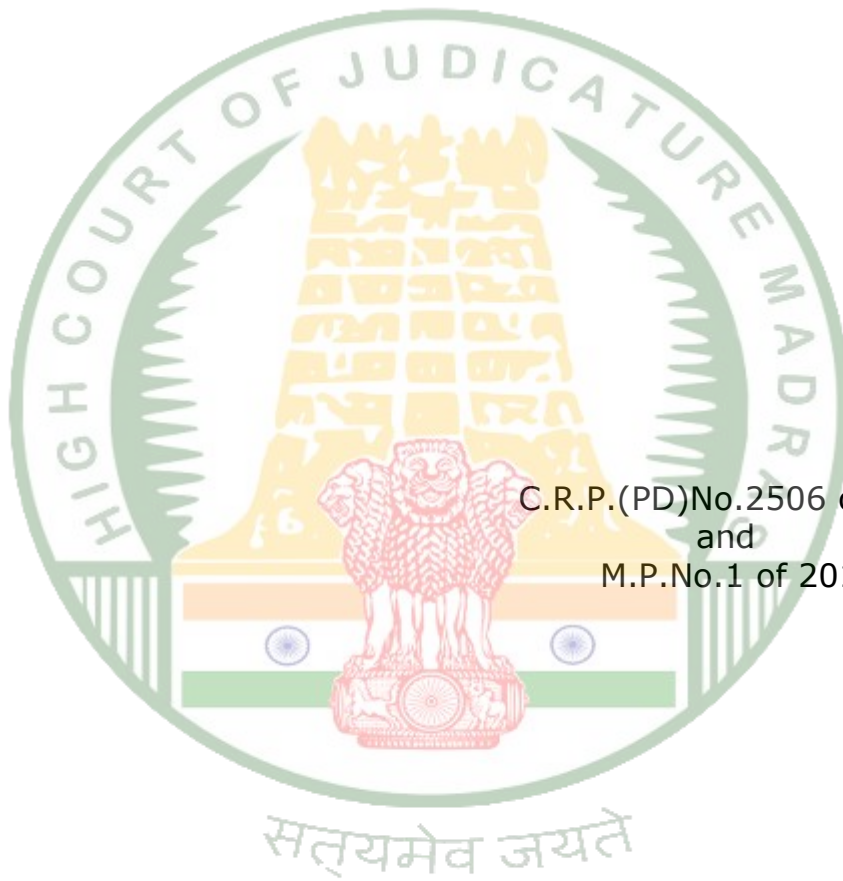
The District Munsif cum Judicial Magistrate,
Paramathi.

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R.HEMALATHA.J.,

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