

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.01.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.R.P. (NPD).No.3001 of 2013

and

M.P.No.1 of 2013

Natarajan

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Petitioner

Vs.

1.The Commissioner
Panruti Municipality
Panruti.

2.Thavamani

3.Sivasankari

4.Sivachandran

5.Minor Sivaguru

(Minor rep.by mother and guardian
Thavamani, R2)

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Respondents

Prayer :- The Civil Revision Petition has been filed under Section 115 of CPC against the fair and the decretal orders dt.13.02.2012 passed in E.A.No.334 of 2009 in E.P.No.108 of 2006 in O.S.No.104 of 1997 on the file of the District Munsif's Court, Panruti.

For Petitioner

: Mr.T.Sezhian

For Respondent
No.1

: Mr.P.V.Selvakumar

Respondent Nos.2 to 5

: No appearance

ORDER

The instant revision has been filed challenging the order dated 13.02.2012 passed in E.A.No.334 of 2009 in E.P.No.108 of 2006 in O.S.No.104 of 1997 by the District Munsif Court, Panruti.

Brief facts leading to the filing of the revision:

2.The petitioner is the plaintiff in the suit O.S.No.104 of 1997 on the file of the District Munsif Court, Panruti. He filed a suit for declaration and possession in respect of the suit schedule property and he has also sought for recovery of possession from the respondents 3 to 7, who are the defendants 3 to 7 in the suit. After contest, the suit was partly allowed in favour of the petitioner on 22.03.2006. The trial Court granted the relief of declaration and mandatory injunction but disallowed the relief of possession. The petitioner filed E.P.No.108 of 2006 in O.S.No.104 of 1997 to execute the decree dated 22.03.2006 passed in O.S.No.104 of 1997. After receipt of the notice in the execution proceedings in E.P.No.108 of 2006, the respondents 3 to 7, who are the judgment debtors in the execution petition, filed a petition under Section 47 of CPC in E.A.No.90 of 2007 questioning the terms of decree. The said E.A. was dismissed by the Executing Court on 22.04.2008. Aggrieved by the dismissal of E.A.No.90 of

2007, the respondents 4 to 7 preferred a revision before this Court in CRP No.2472 of 2008, which was dismissed by this Court on 01.10.2009 by confirming the order passed by the Executing Court in E.A.No.90 of 2007 in E.P.No.108 of 2006. However, the decree holder viz., the petitioner herein was given liberty to file an application for appointment of an Advocate Commissioner to ascertain the nature and extent of the offending construction put up by the respondents 2 to 5 on the suit property. Thereafter, the petitioner filed an application for appointment of the Advocate Commissioner to inspect the suit property for the purpose of ascertaining the nature and extent of the offending construction in the suit lane and to mark the extent of the offending construction and to file his report after ascertaining the offending construction in the suit lane and draw a plan thereto.

3. A counter was also filed by the respondents 2 to 5 in E.A.No.334 of 2009, where in, they have stated in paragraph - 3 that a surveyor to help the Advocate Commissioner will have to be appointed to measure the suit schedule property. The Executing Court by its order dated 28.08.2010 in E.A.No.334 of 2009 directed the Advocate Commissioner to inspect the suit schedule property and file his report as per the prayer sought for by the petitioner in E.A.No.334 of 2009. After inspecting the property, the

Advocate Commissioner filed his report expressing his inability to execute the warrant since the description of the suit schedule property is not sufficient to identify the offending construction. Memo of instructions was also filed on 21.11.2010 by the petitioner to the advocate commissioner's report stating that the suit schedule property is having measurement of 87' x 3' in length and breadth and the same is situated at the southern side of the petitioner's property i.e. 87 x 23 feet. It has also been stated that the total extent of the property is 87' x 26 in length and breadth, in which, the common lane which belongs to the petitioner and the respondents is having the measurement in 87' x 3' at the southern side in which the offending portion of the construction has been constructed. In that memo of instructions filed by the petitioner in E.A.No.334 of 2009, he has requested the Executing Court to direct the advocate commissioner to revisit the suit schedule property and measure the offending portion of construction. According to the petitioner, the advocate commissioner has not perused the plaint, documents and the judgment before filing his report expressing his inability to measure the property and identify the offending construction. The Executing Court, after considering the advocate commissioner's report as well as the memo filed by the petitioner to the advocate commissioner's report, dismissed the memo filed by the petitioner seeking re-inspection of the suit property by the advocate commissioner holding that the petitioner

ought to have sought for appointment of a new advocate commissioner instead of seeking the same advocate commissioner to reinspect the property. Aggrieved over the dismissal of the order dated 13.02.2012 passed in E.A.No.334 of 2009 in E.P.No.108 of 2006 in O.S.No.104 of 1997 on the file of the District Munsif Court, Panruti, the instant revision has been filed.

4. Heard Mr.T.Sezhian, learned counsel appearing for the petitioner and Mr. P.V.Selvakumar, learned counsel appearing for the first respondent. Despite service of notice on the remaining respondents and their names having been printed in the cause list today, there is no representation on their side.

5. As seen from the counter filed by the respondents 2 to 5 in E.A.No.334 of 2009, they have not raised any objection for the appointment of an advocate commissioner to measure the suit schedule property but in addition to the appointment of advocate commissioner, the respondents 2 to 5 have requested the Court to appoint the surveyor to assist the advocate commissioner to measure the suit schedule property. Even before this Court, the learned counsel for the respondents 2 to 5 has not objected to the appointment of the advocate commissioner but has requested this Court to also appoint a surveyor, who shall assist the advocate commissioner in

measuring the suit schedule property. The Executing Court by its order dated 28.08.2010 in E.A.No.334 of 2009 in E.P.No.108 of 2006 in O.S.No.104 of 1997 appointed an advocate commissioner to measure the suit schedule property and ascertain the offending construction. But the advocate commissioner, after inspection, expressed his inability to execute the warrant of commission due to insufficient description of the property details in the suit schedule property. He had only sought for a clarification from the Executing Court in his report. But instead of directing the Advocate commissioner to revisit the suit schedule property after providing necessary clarifications, the Executing Court, without any reason, has rejected the memo filed by the petitioner seeking for a direction to the advocate commissioner to revisit the suit schedule property and submit the report as per the advocate commissioner's warrant. It is to be further noted that the respondents 2 to 5, who are the judgment debtors, have themselves stated in their counter in E.A.No.334 of 2009 that an advocate commissioner can be appointed and the only additional request they have made is that a surveyor shall also be appointed to assist the advocate commissioner in measuring the suit schedule property. Considering all these undisputed factors, this Court is of the considered view that the Executing Court should have directed the Advocate Commissioner to reinspect the suit schedule property with the assistance of a surveyor to enable him to measure the suit

schedule property and identify the offending constructions.

6. For the aforementioned reasons, the following directions are issued:

(a) The Advocate Commissioner earlier appointed is directed to revisit the suit schedule property with the assistance of the Surveyor. In case, the Advocate Commissioner already appointed by the Executing Court is not available, the petitioner is given liberty to approach the Executing Court by filing a memo for appointment of fresh Advocate Commissioner to execute the warrant with the assistance of the Surveyor.

(b) The Advocate Commissioner as well as the Surveyor are permitted to peruse the documents marked in the suit in order to effectively measure the property.

(c) After executing the warrant, the Advocate Commissioner is given liberty to claim additional remuneration for the service rendered by him and the surveyor.

E.A.No.334 of 2009 in E.P.No.108 of 2006 in O.S.No.104 of 1997 on the file of the District Munsif's Court, Panruti, is hereby set aside and the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

07.01.2019

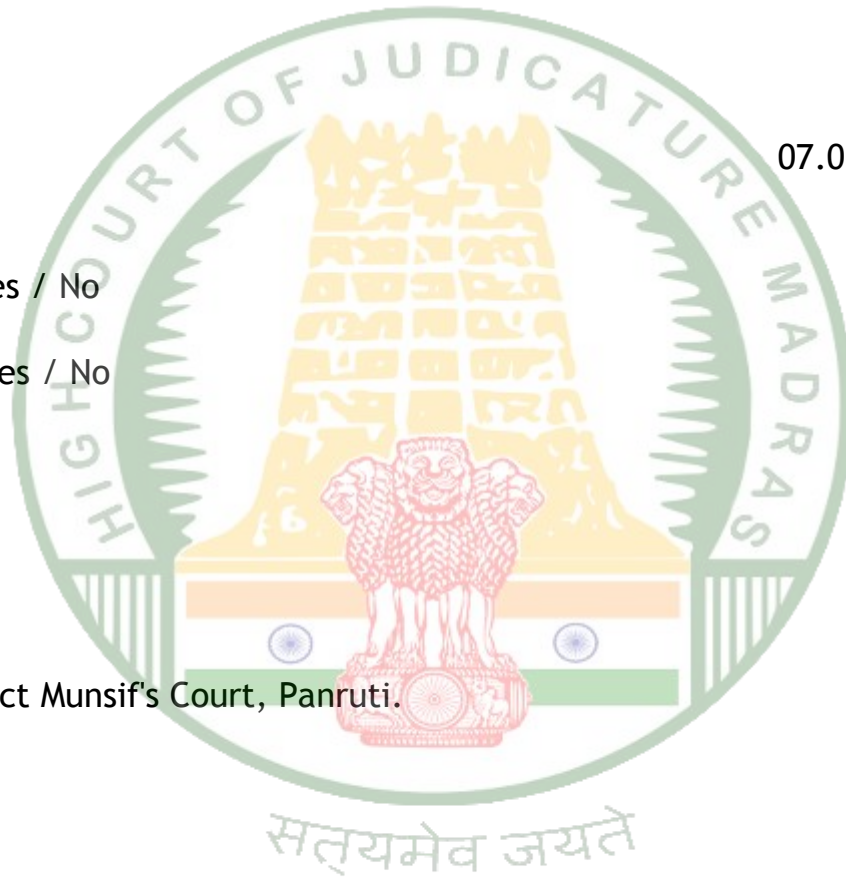
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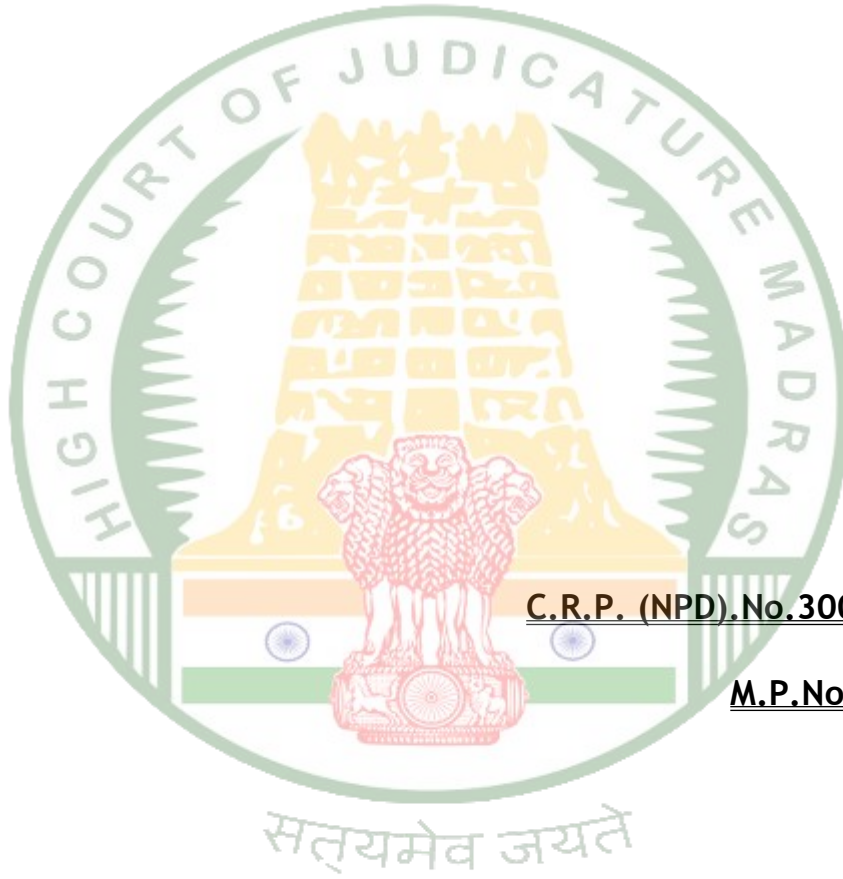
1.The District Munsif's Court, Panruti.



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ABDUL QUDDHOSE, J.

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