

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD).No.4328 of 2013

and

M.P.No.1 of 2013

1.Moorthiammal
2.Sundarambal
3.R.Radha

...Petitioners

Vs.

1.Gurusamy Naidu
2.Muthayammal

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order of the learned District Munsif cum Judicial Magistrate, Kodumudi made in E.A.No.18 of 2012 in E.P.No.26 of 2002 in O.S.No.64 of 1997, dated 21.08.2013.

For Petitioners : Mr.C.Jagadish

For Respondents : Mr.V.S.Kesavan

ORDER

The civil revision petition has been filed as against the order of the trial Court, dismissing the application filed to set aside the Advocate Commissioner report and to appoint fresh Advocate Commissioner and to reissue the warrant for formation of road in the suit property.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

3. The learned counsel for the revision petitioners submitted that the pathway has not been formed for the entire area and unless the pathway is formed, allotments made to the various parties cannot be enjoyed. Hence, the only issue involved in this revision petition is to reissue the warrant for laying the pathway for the entire area.

4. The learned counsel for the respondents has no serious objection for laying the pathway for the entire property.

5. It is not in dispute that the final decree was passed in O.S.No.64 of 1997. The suit property is a larger extent of 54 acres and 60 cents, which was divided into 44 equal shares. The plan produced before this Court indicted that Item Nos.1, 12 and 13 and other areas have been allotted to the revision petitioners. Similarly, the shares have been allotted to the respondents. Though, the larger extent has been divided into various shares, the pathway has not been demarcated right from the road to the end of the property. As rightly contended by the learned counsel for the revision petitioners, if the pathway has not been demarcated, it will be very difficult for the allottees, who have been allotted at the end of the property to enjoy the property.

6. Therefore, this Court is of the view that the demarcation of the pathway is necessary for convenient enjoyment of the parties, though, final decree has already been passed. Hence, to give a quietus to the issue, this Court directs the trial Court to reissue the warrant to the same Commissioner for forming the pathway in the straight line from the road to the end of the property, as shown in the plan 'C-2'.

7. With the above direction, the revision petition is disposed of. No costs. The trial Court shall reissue the warrant to the same Advocate Commissioner, appointed earlier, who shall demarcate the pathway as per the plan within a period of four months from the date of receipt of a copy of this order. The revision petitioners undertakes to bear the expenses for re-appointment of the Advocate Commissioner. Connected miscellaneous petition is closed.

सत्यमेव जयते

20.03.2019

Internet : Yes / No

Index: Yes / No

Speaking Order / Non-Speaking Order
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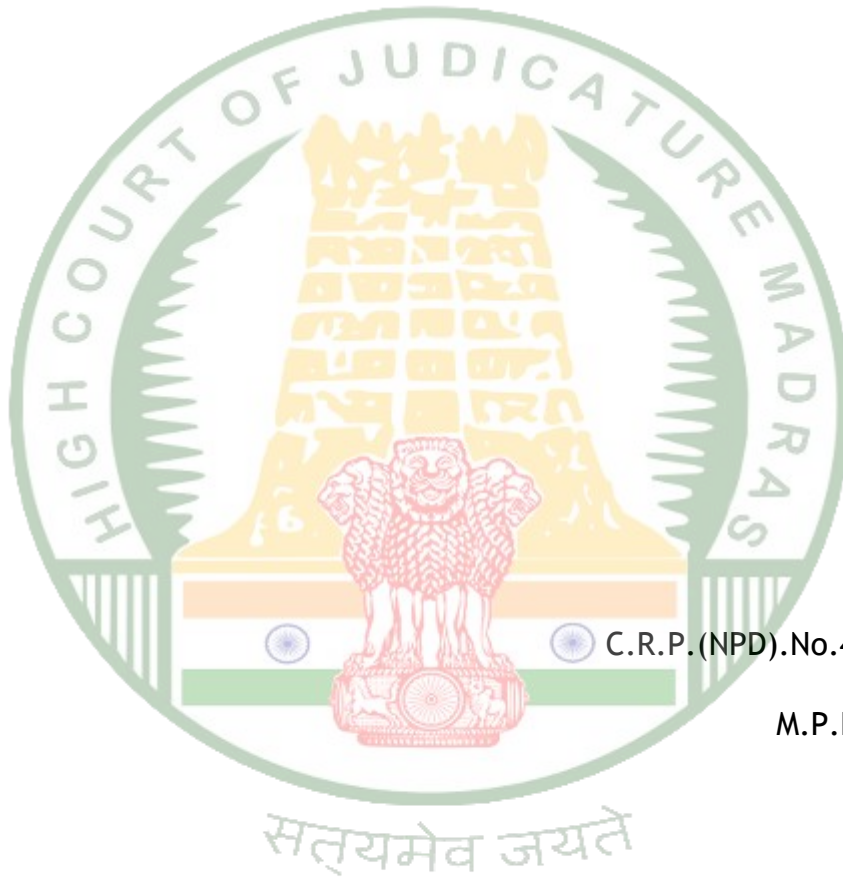
To

The District Munsif cum Judicial Magistrate,
Kodumudi.

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N.SATHISH KUMAR, J.

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