

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2019

C O R A M

**THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR**

**CRP PD No.4355 of 2013**  
**and M.P.No.1 of 2013**

1. Sivabackiyam  
2. Annapoorani  
3. Lakshmi  
4. Subramanian

... Petitioners

Vs.

Anand

... Respondent

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 12.09.2013 passed by the Principal District Munsif, Kallakurichi in I.A.No.1873 of 2012 in O.S.No.371 of 2010.

For Revision Petitioners : Mr.P.Valliappan

For Respondent : Mr.P.Rajavel

**ORDER**

Challenging the order of dismissal passed by the trial court in I.A.No.1873 of 2012 in O.S.No.371 of 2010, this revision petition has been filed.

2. The revision petitioners are the plaintiffs in the original suit and they filed the suit for permanent injunction. The plaintiffs have filed an application to appoint an advocate commissioner to note down the physical features of the property and to file his report. That petition was allowed by the trial court and the commissioner has also filed his report noting the physical features of the property. But the commissioner's report was objected by the plaintiffs stating that he has not located the boundary stones and they filed another application to eschew the report of the advocate commissioner and to re-appoint a new advocate commissioner, to locate the boundary stones and to file report. That application was dismissed by the trial court. Against which, this revision has been filed.

3. The learned counsel appearing for the revision petitioners would submit that unless the boundary stones are located, it is very difficult to establish the case of the plaintiffs. He would further contend that the advocate commissioner himself indicated in his report that he could not measure the property as per the boundaries and therefore, re-appointment of a new advocate commissioner is necessary.

4. The learned counsel appearing for the respondent contended that the commissioner has measured the property as per the enjoyment of the parties and only on the basis of the instructions given by both the parties, he found out the exact area, in which both the parties are in occupation and hence there is no need to appoint a new advocate commissioner.

5. I have perused the materials on record. The suit is filed for bare injunction. The only dispute between the parties is with regard to the compound wall. The commissioner's report clearly indicates that he has measured the property and infact the measurements are tallied with the boundaries given by the petitioners. Therefore, I am of the view that the commissioner cannot be re-appointed to locate the boundary stones on the basis of the revenue records. Such attempt will be only a futile exercise. Normally, if any patta is granted to "natham nilavari", they won't put any boundary stones. Therefore, to locate the boundary stones by appointing another commissioner is only a futile exercise and the same will not serve any purpose to anybody. Hence, the revision is dismissed.

6. In the result,

(i) The civil revision petition is dismissed. No costs.

The connected civil miscellaneous petition is closed and the order of trial court is confirmed.

(ii) The trial court is directed to decide the issues involved in the suit, after considering the pleadings and evidence of respective parties and commissioner report and dispose the suit within a period of four months from the date of receipt of a copy of this order.

26.02.2019

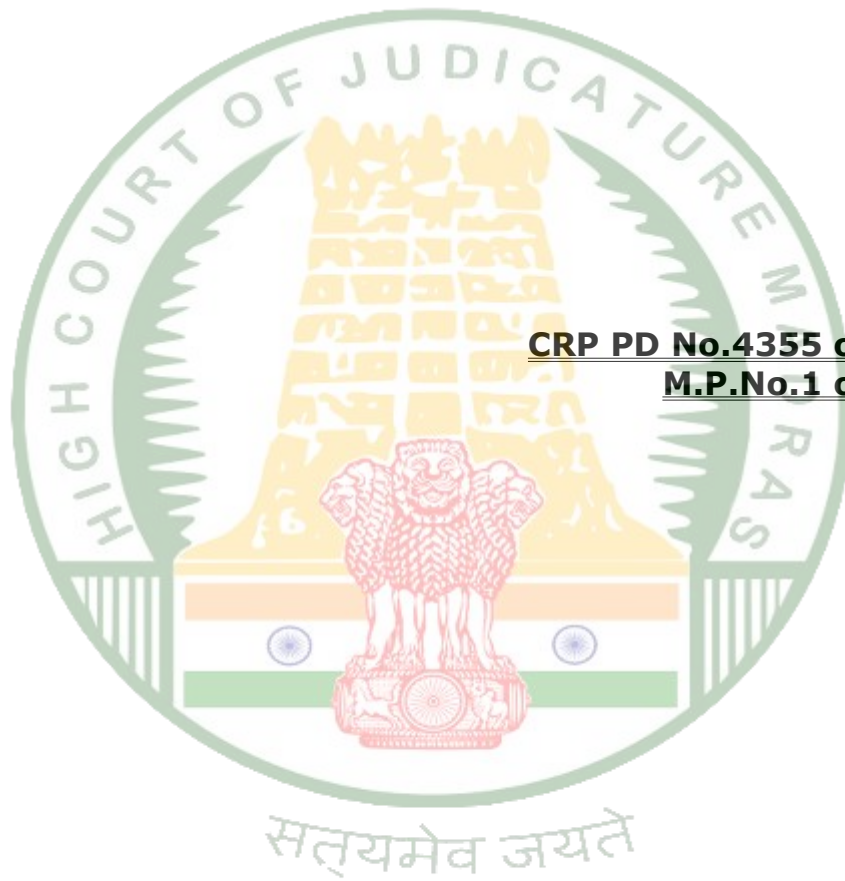
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To

1. The Principal District Munsif, Kallakurichim

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**N.SATHISHKUMAR, J.**  
mst



**CRP PD No.4355 of 2013**  
**M.P.No.1 of 2013**

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**Date: 26.02.2019**