

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2019

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THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(PD).No.1625 of 2019

M.Kumar

..Petitioner/Plaintiff

Vs

1.Rosemari

2.Vasuki

..Respondents/Defendants

This Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decreetal order dated 13.08.2018, made in I.A.No.503 of 2018 in O.S.No.186 of 2017, passed by the District Munsif Court, Nagapattinam.

For Petitioner : M/s.S.Kanmani Annamalai

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned District Munsif, Nagapattinam in I.A.No. 503 of 2018 in O.S.No.186 of 2017, in and by which, the learned Judge has dismissed the application filed by the plaintiff for appointment of an Advocate Commissioner to note down the measurement of the sun shades that has been put up on the wall in the northern side of the defendants property and the length and breadth of the suit property and the usage of the pathway and the obstructions that have been put up

therein. The defendants have vehemently opposed the said petition on the ground that it is an attempt to collect evidence.

2 From a perusal of the petition it clearly demonstrates that it is nothing but an attempt to gather evidence through the Advocate Commissioner. The suit is one for bare injunction. Even in the written statement, the respondents have clearly stated that the construction had been completed much before the filing of the suit by the plaintiff and therefore, the suit itself was not maintainable.

3 Be that as it may, considering the fact that the suit is one for bare injunction and I.A.No.503 of 2018, for an Advocate Commissioner has been filed seeking appointment of the Advocate Commissioner to measure the length and breadth of the suit schedule property, to note down usage of the passage and also the obstructions caused thereon, it is a clear case that the petitioner/plaintiff wants to use the Advocate Commissioner for gathering evidence and it has been held by the Hon'ble Supreme Court as well as by this Court time and again that an Advocate Commissioner's report cannot be used

as a substitute for evidence. This Court does not find any infirmity in the order passed by the Court below.

4 In the result, the Civil Revision Petition stands dismissed and order passed in I.A.No.503 of 2018 in O.S.No. 186 of 2017 by the District Munsif Court, Nagapattinam, dated 13.08.2018, stands confirmed. No costs.

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Index: Yes/No
Internet: Yes/No
Speaking order / Non-speaking order
To

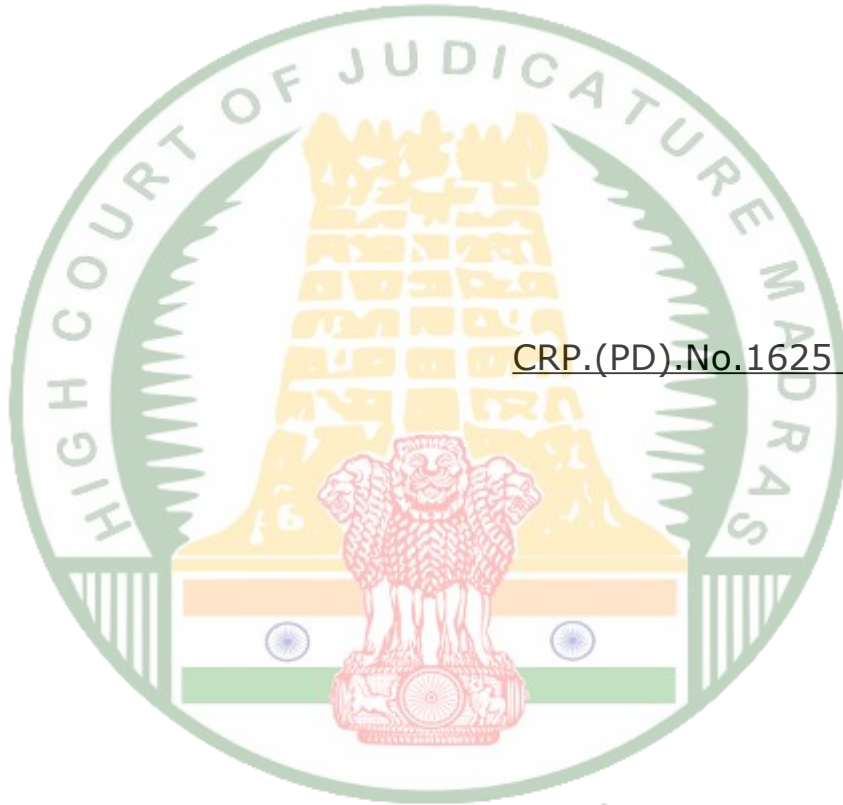
The District Munsif Court,
Nagapattinam.

29.04.2019

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P.T.ASHA, J.

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