

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(PD) No.4619 of 2014

1.K.Murugan
2.K.Sampath

.. Petitioners

vs

Chinnapaiyan @ Chinnathambi

.. Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the impugned order dated 27.02.2014 passed in I.A.No.388 of 2013 in O.S.No.129 of 2009 on the file of the Principal District Munsif Court, Tiruvannamalai.

For Petitioner : Mr.R.Agilesh

For Respondent : Mr.B.Jawahar

ORDER

This civil revision petition is filed to set aside the impugned fair and decretal order dated 27.02.2014 on the file of the Principal District Munsif Court, Tiruvannamalai in I.A.No.388 of 2013 in O.S.No.129 of 2009.

2. The revision petitioners are the defendants. The respondent/plaintiff filed the suit for declaration and permanent injunction. Thereafter, the

petitioners had filed I.A.No.388 of 2013 under Order 26 Rule 9 of C.P.C. for appointment of Advocate Commissioner to make the local investigation of the suit property to note the physical features of the suit property, to measure the properties bearing Dry S.No.11/5A 0.04.0 hectare, Dry S.No.11/5B 0.42.0 hectare and Dry S.No.11/5C - 0.53.0 hectare with the help of a qualified surveyor, to note whether any channel is running from the well in S.No.11/5A to irrigate any of the lands bearing S.No.11/5C and Wet S.No.8/3A2 0.06.5 hectare, which belong to the wife and to note the existence of a well in S.No.11/5C, to find out whether any pathway is situated on the western portion of the land bearing Dry S.No.11/5B commencing from Perumpakkam road up to the land bearing Dry S.No.11/5C, which belongs to the respondent and his wife Kasthuri, note the existence of the pond on the western side of the lands bearing Dry S.Nos.11/5B and 11/5C, to note the existence of the eastern bank of the said pond to a width of 10 feet east west commencing from Perumpakkam road up to the lands of the respondent and his wife and to find out whether the respondent/plaintiff and the members of his family have been reaching the land and the house in S.No.11/5C from the northern Perumbakkam road by passing through the eastern bank of the said public pond and to submit a report along with plans. That application was dismissed on the ground that the suit was pending for cross examination of D.W.1 and with an observation that the petitioner was not entitled to appoint an Advocate Commissioner based on the averment in the affidavit.

3. The learned counsel for the petitioner has relied upon the decision of this Court in ***P.Moosa Kutty, In re.***, AIR 1953 Mad 717.

4. The learned counsel for the respondent relied upon the decision of this court reported in ***M.A.Saravanan and Others vs.Kannan and Others***, 2013(1) MWN (Civil) 878, wherein it was held that in a suit for declaration and injunction, the defendants cannot seek for the appointment of an Advocate Commissioner to disprove the case of the plaintiff and that the plaintiff is bound to prove the case based on the pleadings and the defendants are not entitled to file application for appointment of Advocate Commissioner to disprove the case of the plaintiff.

5. Learned counsel for the respondent also relied upon another decision of this Court reported in ***Sevugan; Arumugam vs. Chinnathambi***, 2016(3) MWN (Civil) 527 wherein it was held that an Advocate Commissioner cannot be appointed to collect evidence and prove the case of litigant.

6. There is no merit in the present civil revision petition. The order impugned dismissing the application cannot be faulted.

7. The Court below has observed that the issues were framed as early as on 30.01.2010 and at the case was pending for cross examination of D.W.1. It is at that stage, I.A.No.388 of 2013 was filed .

8. While it is true that an Advocate Commissioner can be appointed for making local investigation and to give a report on the physical features of the suit property, it is not for the petitioner to preempt the respondent/plaintiff from proving this case by getting an Advocate Commissioner to prove the case.

9. Further, dispute pertains to agricultural land and almost ten years lapsed, filing of the suit and five years since the pendency of the present civil revision petition. I cannot find any merits in allowing this present civil revision petition. The respondent/ plaintiff may prove the case based on the filing reference and it is not for the petitioner to ask for an Advocate Commissioner to give a report in respect of the land particularly to disprove the case of the respondent/plaintiff.

10. Further at this distant point of time, whether the channel/pathway existed or not cannot be decided based on the report of the Advocate Commissioner. Ultimately, the respondent is bound to succeed or fail based

on the averment in the plaint and evidence on record. Since the trial has also been completed, there is no necessity to appoint Advocate Commissioner.

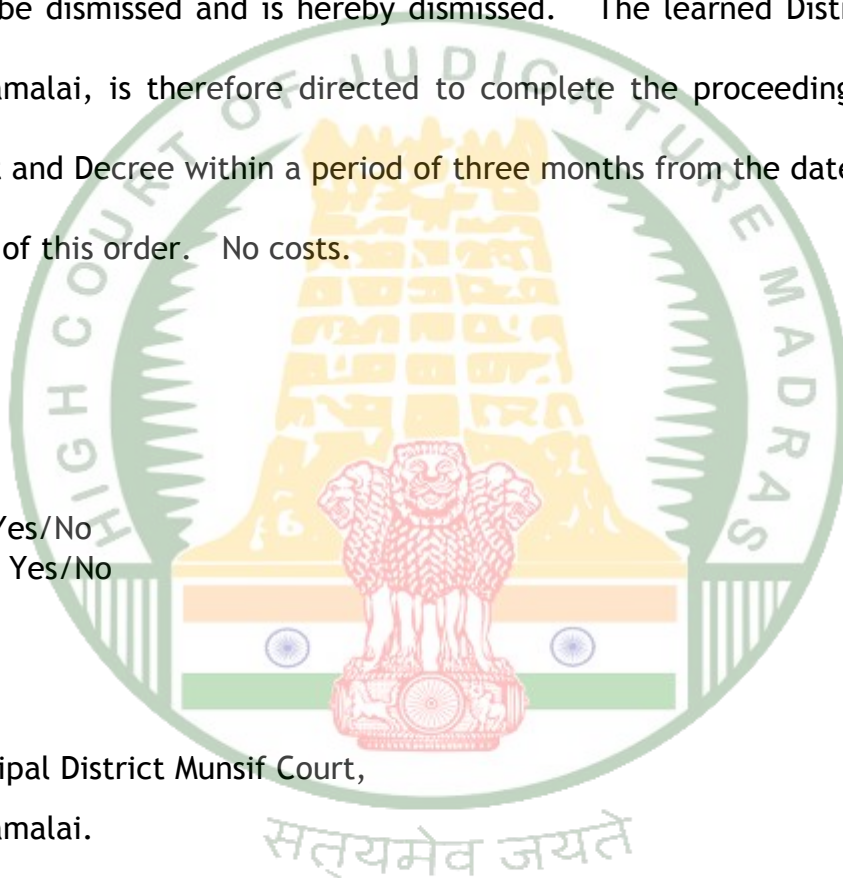
11. In the light of the above observations, the civil revision petition is liable to be dismissed and is hereby dismissed. The learned District Munsif, Tiruvannamalai, is therefore directed to complete the proceedings and pass Judgment and Decree within a period of three months from the date of receipt of a copy of this order. No costs.

18.03.2019

Index : Yes/No
Internet : Yes/No
kkd

To

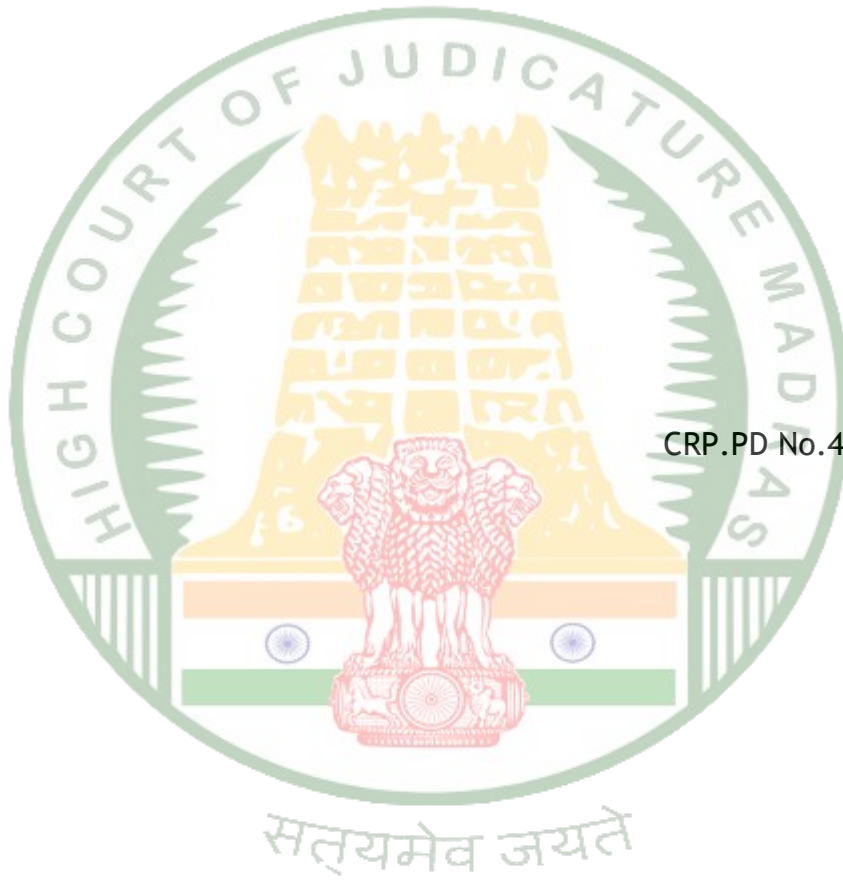
The Principal District Munsif Court,
Tiruvannamalai.



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C.SARAVANAN,J.

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