

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(PD)No.3223 of 2019 and  
C.M.P.No.21023 of 2019

Minor Krishnakanth, S/o.Pandian  
Rep. by his mother and  
next friend Ganthimathi  
Residing at Tamizhar Street,  
Peria Singalanthi,  
Thiruthuraipoondi.

... Petitioner

Vs.

1.Subramanian

2.Manikandan

3.Arulmighu Bavaowtheeswarar Swami Thirukoil,  
Rep. by its Executive Officer,  
Thiruthuraipoondi.

4.The Commissioner,  
Thiruthuraipoondi Municipality,  
Thiruthuraipoondi.

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India  
praying to set aside the order dated 06.07.2018 made in I.A.No.371 of  
2017 in O.S.No.58 of 2016 on the file of the Court of the District  
Munsif, Thiruthuraipoondi.

For Petitioner : Mr.T.Dhanasekaran

**ORDER**

This revision petition has been filed against the fair and decretal order passed by the District Munsif, Thiruthuraipoondi in I.A.No.371 of 2017 in O.S.No.58 of 2016 dated 06.07.2018.

2.Before the trial Court, the petitioner is the plaintiff, who filed the suit in O.S.No.58 of 2016 for the relief of injunction as well as for easementary right for the suit property.

3.In the said suit, the defendants filed the present application i.e., I.A.No.371 of 2017 for appointment of Advocate Commissioner with a direction to the Advocate Commissioner to visit the property and verify the physical features including the pathway claimed by the plaintiff and other aspects and to file a report to that effect.

4.The said application, having been heard, was allowed by the learned Judge through the impugned order dated 06.07.2018, as against which, the present revision has been filed by the petitioner/ plaintiff.

5.Heard the learned counsel for the petitioner/plaintiff, who would submit that, the adjacent property or pathway belongs to the 3rd defendant H.R. & C.E. and it does not belong to the defendants 1 and 2 and this position with regard to the pathway belongs to the 3rd defendant has been admitted. When that being the position, mere appointment of an Advocate Commissioner, at the instance of the defendants 1 and 2, would not anyway helpful to the Court to decide the issue.

6.Moreover, the learned counsel would further submit that, in order to collect further evidence and to drag on the case, the defendants had filed this application, which was erroneously allowed by the learned Judge and therefore, the said order, which is impugned in this revision, is liable to be interfered.

7.Heard the learned counsel for the petitioner and I have considered the materials placed before this Court and I have gone through the impugned order.

8. Admittedly, the suit filed for bare injunction as well as declaration of easementary right. Normally, if a prayer sought for declaration of easementary right, as to whether the plaintiff was enjoying such easementary right has to be first ascertained. Therefore, in this context, since the Advocate Commissioner was appointed to ascertain the physical feature of the property including the alleged easementary right, as the plaintiff admittedly claims easementary right through the B schedule property, which, according to the plaintiff, belongs to the 3rd defendant H.R. & C.E., in order to ascertain all these factors, atleast *prima facie* the Court requires a report in this regard to be filed by the Advocate Commissioner. Therefore, when it was triggered by the defendants to appoint an Advocate Commissioner, the Court has taken it as an opportunity to appoint the Advocate Commissioner and accordingly, the petition was allowed.

9. In the facts and circumstances of the case, especially, in the context of the prayer of easementary right sought for in the main suit by the plaintiff, this Court feels that, the appointment of Advocate Commissioner cannot be said to be erroneous and instead, it can only be construed as a necessary aspect. Therefore, there is absolutely no

infirmity, illegality or perversity attached with the order passed by the trial Court, which is impugned herein.

10.In that view of the matter, this revision petition fails and hence, it is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

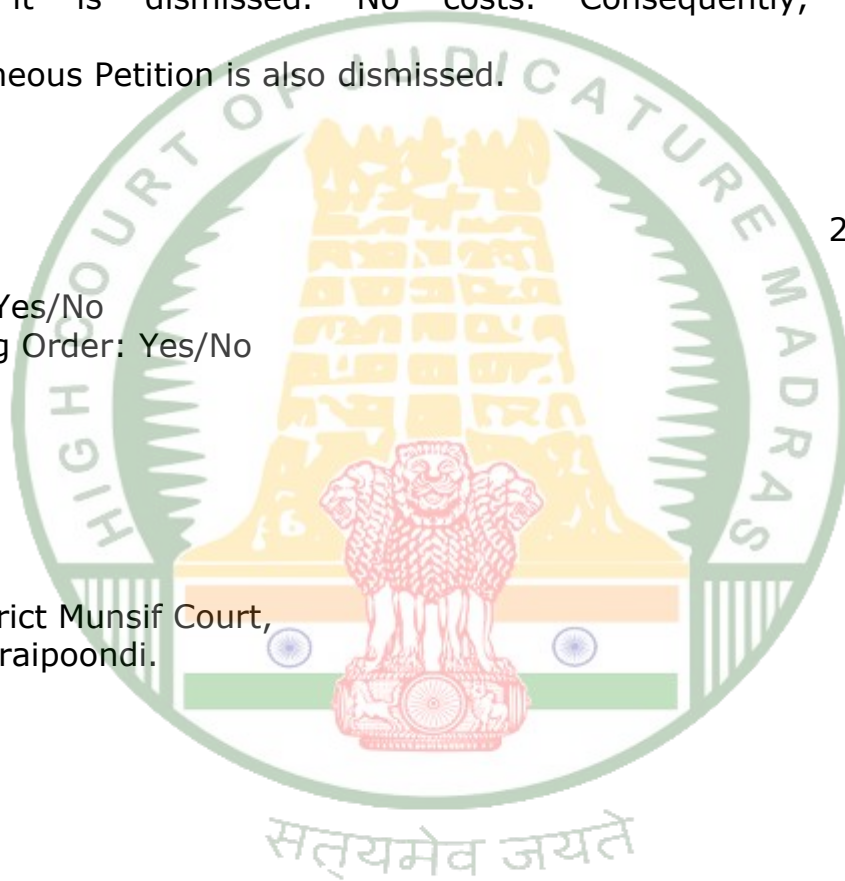
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Index : Yes/No  
Speaking Order: Yes/No

Sgl

To

The District Munsif Court,  
Thiruthuraipoondi.

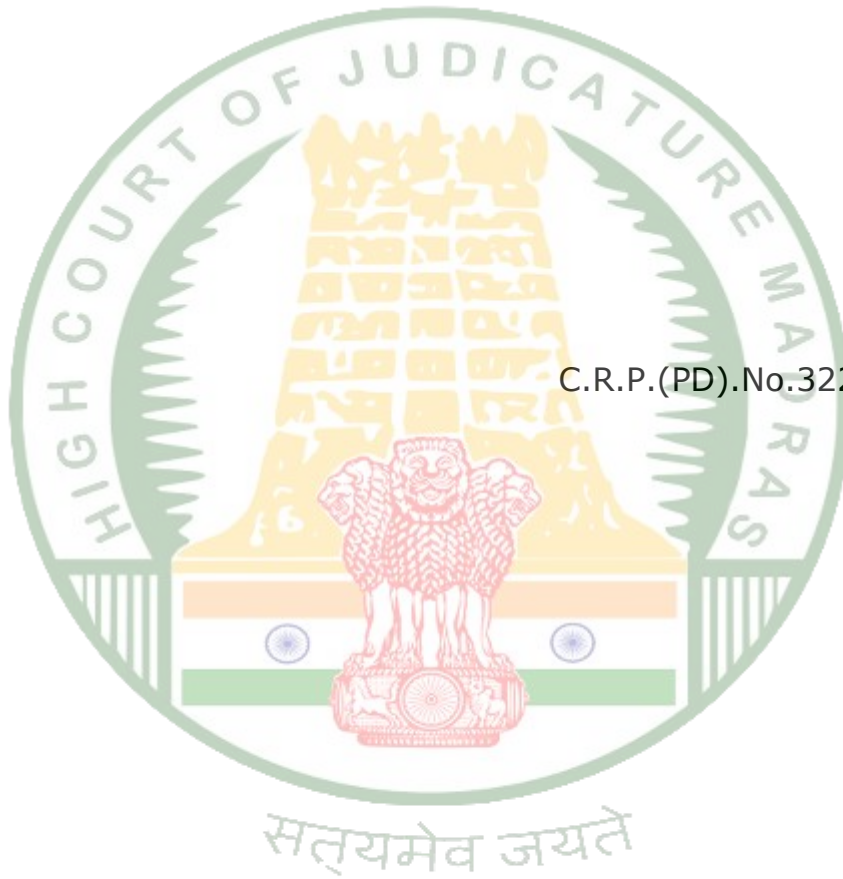


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R.SURESH KUMAR, J.

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