

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. PD 4050 of 2019
and
C.M.P. 26589 of 2019

Mani,
rep. by his Power of Attorney
Holder,
K.V.Shanmugasundaram

... Petitioner

Versus

S.Sadasivam

... Respondent

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the fair and final order in I.A. No.2 of 2019 in O.S. No.448 of 2017 on the file of I Addl. District Munsif, Erode dated 01.10.2019.

For Petitioner : Mr.D.Kanagasundaram

For Respondent : Mr.S.Kaithamalai Kumaran

ORDER

This Civil Revision Petition has been filed against the order dismissing the petitioner's application to re-issue the warrant to the Advocate Commissioner to measure the suit schedule property and file a fresh report.

2. The petitioner has filed a suit for permanent injunction restraining the respondent from interfering with the cart track. Pending Suit, the respondent/defendant filed an application for appointment of advocate commissioner, and the Advocate Commissioner has inspected the suit property in the presence of both parties. Thereafter, he has filed a report showing that a small water channel has been formed by the respondent/defendant, which looks newly constructed. Based on the above report, the petitioner has amended the plaint seeking for a mandatory injunction to remove the water channel, and the that amendment petition was allowed. now the trial commenced. At this stage, the present application has been filed seeking to re-issue the warrant to advocate commissioner to measure the suit property once again, and file a fresh report. That application

came to be dismissed. Challenging the same, the present Civil Revision Petition has been filed.

3. I have heard and considered the submissions made by learned counsel appearing for petitioner as well as learned counsel appearing for respondent and perused the records carefully.

4. In the suit, already an Advocate Commissioner was appointed, and he has filed his report stating that, a new water channel found in the cart track. Subsequently, the petitioner has also filed an application seeking for amendment to remove the water channel, which is found in the suit cart track. In the above circumstances, there is no necessity to re-issue warrant to the Advocate Commissioner once again to measure the property to find out the actual extent of the entire property that too after the commencement of trial. The Trial Court after considering the entire materials, has rightly dismissed the application, and I do not find any merit in this Civil Revision Petition.

5. However, considering the fact that the trial is already commenced, the Trial Court is directed to dispose the suit within a period of three months from the date of receipt of copy of this

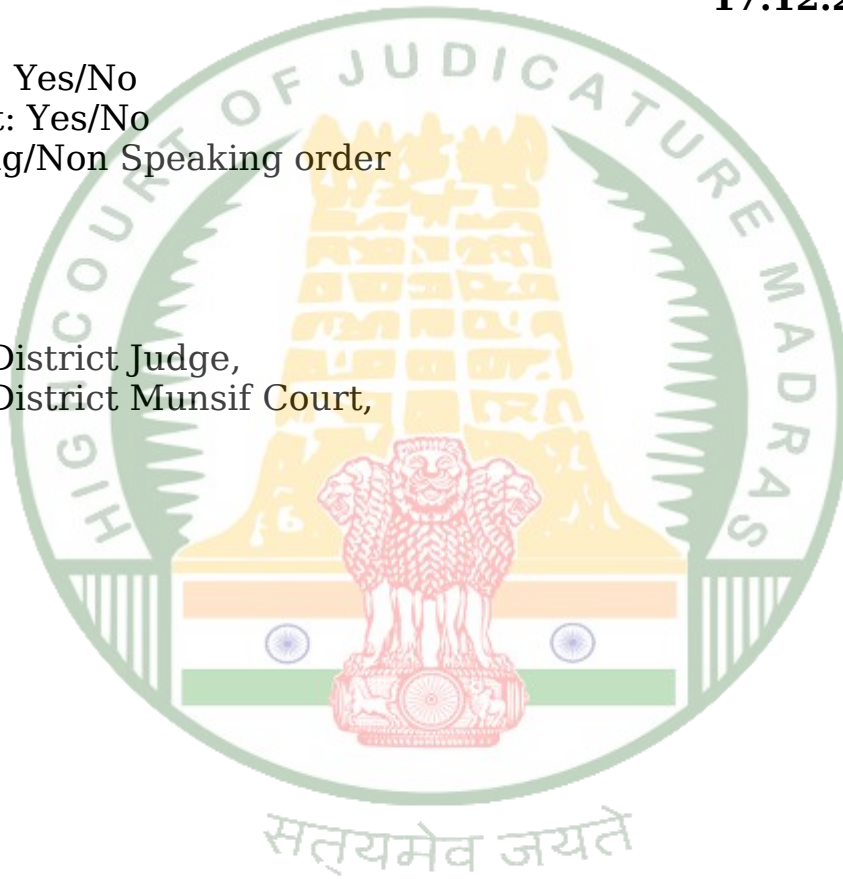
order. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition in C.M.P. 26589 of 2019 is closed.

17.12.2019

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

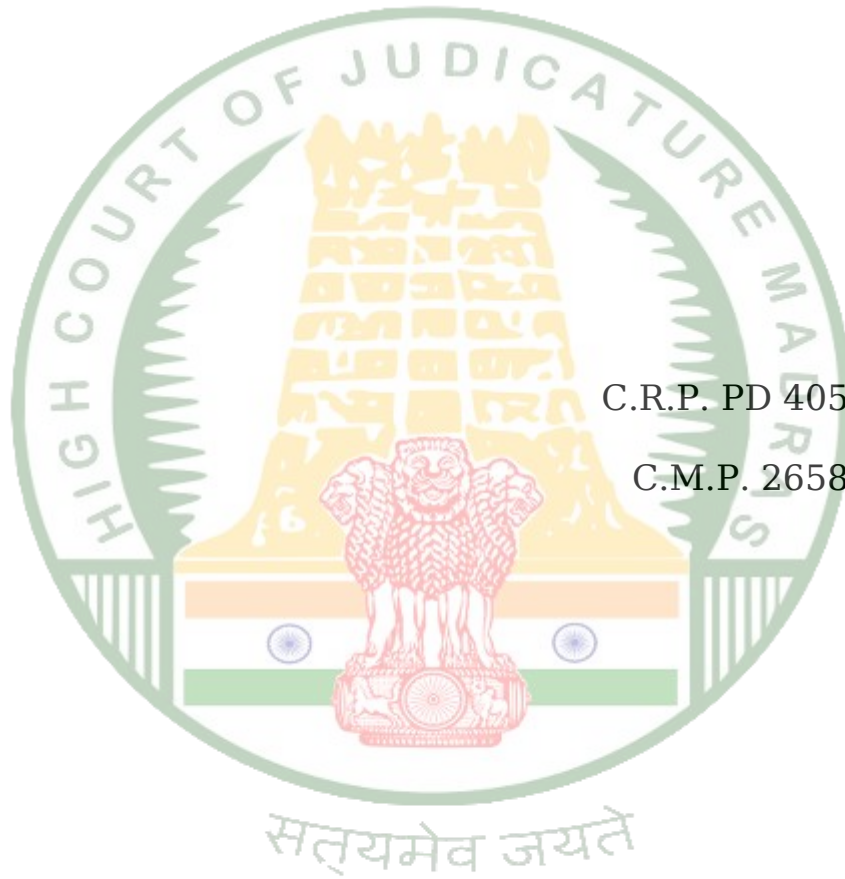
I Addl. District Judge,
I Addl. District Munsif Court,
Erode.



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V.BHARATHIDASAN,J.

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