

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09 / 09 / 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CRP (PD) NO.1862 OF 2019
AND CMP NO.12282 OF 2019

1.S.K.Ganesan
2.Balamurugan

... Petitioners

Vs.

1.Muthulakshmi
2.Gayathridevi
3.Balakumar

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 26.10.2018 passed in I.A.No.78 of 2018 in I.A.No.1150 of 2017 in O.S.No.270 of 2017 on the file of District Munsif Court, Udumalpet.

For Petitioners : Mr.K.Dhananjayan
for Mr.A.Sivaji

For Respondents : Mr.R.Gokulakrishnan
for Mr.S.Gunalan

ORDER

This Civil Revision Petition is directed against the dismissal of the interlocutory application filed for reissue of warrant to the Advocate Commissioner.

2. The petitioners are the defendants in the suit in O.S.No.270 of 2017 on the file of District Munsif Court, Udumalpet. The respondents are the plaintiffs. The suit was filed for declaration and injunction, wherein an Advocate Commissioner was appointed *ex parte* without notice to the petitioners / defendants. It is stated that the Advocate Commissioner has recorded that the Cart Track was blocked by a heap of stones. But the Advocate Commissioner has not mentioned anything about the other Cart Track available for usage of the plaintiffs. For the purpose of finding out the specific details of alternative Cart Track, the petitioner sought for reissue of warrant. In the counter affidavit filed to the above interlocutory application for reissue of warrant, it admitted by the respondents / plaintiffs that subject

to conditions, a Cart Track was formed and it is useful at the time of irrigation in PAP canals. Further, the right was claimed on the basis of a Partition Deed dated 29.11.1959. Therefore, reissue of warrant to the Advocate Commissioner is not necessary. The Trial Court accepted the contention that there is admission as to the existence of alternative pathway and dismissed the petition.

3. The learned counsel for the petitioners would contend that the Advocate Commissioner's report, admittedly is defective and once it admitted as a document, it will operate as *resjudicata* against the petitioners at the time of final disposal of the suit. Even though it is admitted that there is an alternative pathway, its location and other usages were not specifically mentioned. The facts in this regard need to be clarified to the Trial Court. It is also submitted that the Advocate Commissioner's report not only mentioned the alternative pathway, but also benefit of the existence of the structures in the subject matter of the suit. Therefore, re-issuance of warrant is very much essential.

4. The learned counsel for the respondents would contend that admitted facts need not be proved and therefore, there is no requirement for reissuing the Commissioner's warrant to find out an admitted fact.

5. I have heard the submissions made on either side and perused the materials available on record.

6. It is not in dispute that there is another Cart Track available for transport. The respondents clearly admit that there is another Cart Track. However, it is pertinent to note that the inspection was conducted in the absence of the petitioners / defendants. When it is stated that there are other material structures available in the subject matter of the suit, the measurement of the other Cart Track and other essential material facts were not recorded. Since the respondents have admitted the existence of the Cart Track, getting further details about the said Cart Track will only further clarify the issue enabling the Trial Court to arrive at a clear finding. The re-issuance of warrant will not prejudice the respondents / plaintiffs as they

have admitted the facts. In such circumstances, when the re-issuance of Commissioner's warrant will not prejudice the respondents/plaintiffs, I do not find anything wrong in reissuing the warrant. Therefore, the order refusing to reissue the warrant by the Trial Court in I.A.No.78 of 2018 in I.A.No.1150 of 2017 in O.S.No.270 of 2017 dated 26.10.2018 is set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No
TK

To

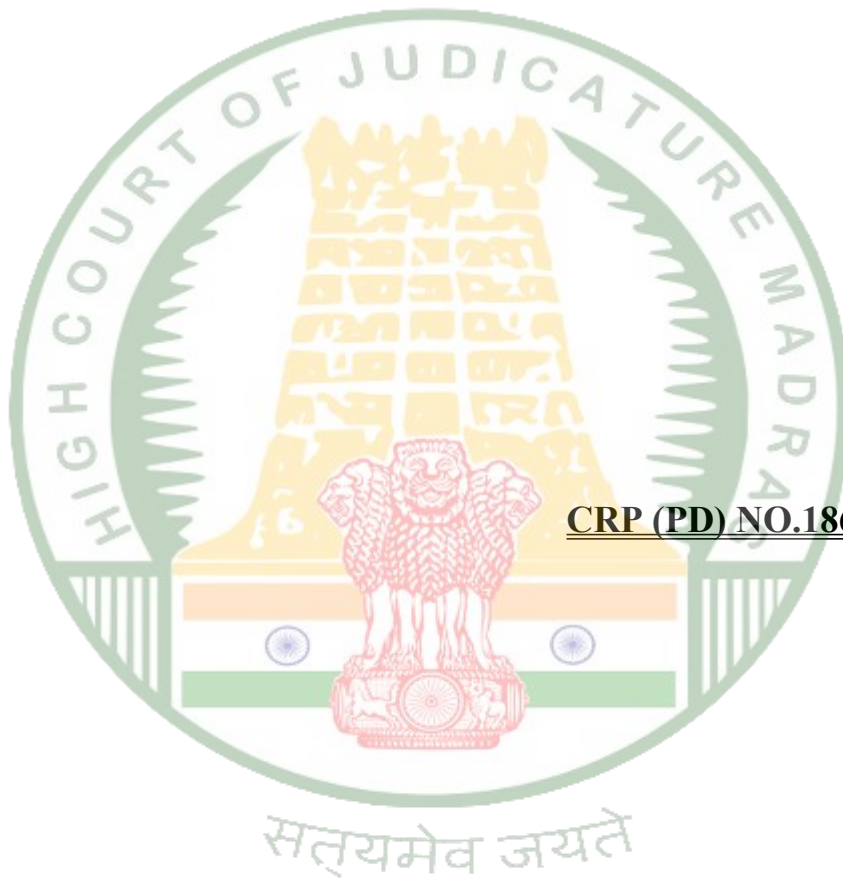
The District Munsif
District Munsif Court
Udumalpet.

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M.GOVINDARAJ, J.

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