

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2020

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**THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM**

C.R.P(PD)No.2434 of 2015

and

M.P.No.1 of 2015

Sundarambal

... Petitioner / Respondent /Plaintiff

Vs.

The Executive Officer,  
Thammampatti town Panchayat,  
Thammampatti Post,  
Gangavalli Taluk,  
Salem District.

... Respondent / Petitioner/Defendant

**PRAYER:** Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 20.04.2015 passed in I.A.No.475 of 2014 in O.S.No.87 of 2010 on the file of Subordinate Court, Attur.

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For Petitioner : Mr. A.Rajakumar

For Respondent : M/s.R.Indhumathi

for M/s.D.Suriyanarayanan

## ORDER

This Civil Revision Petition has been filed by the respondent/plaintiff against the order dated 20.04.2015 passed by the learned Sub Judge, Attur in I.A.No.475 of 2014 in OS.No.87 of 2010.

2.The relevant facts leading to the filing of the present Civil Revision Petition, are as follows:

The respondent herein had filed an application in I.A.No.475 of 2014 in OS.No.87 of 2010 on the file of Sub Court, Attur under Order 26 Rule 9 CPC r/w Section 151 of CPC praying to appoint an Advocate Commissioner to note down the length and breadth of the ditch constructed by the respondent herein on the western side of the suit property and find out whether there was any ditch water leakage and also note down the physical features and file a report with plan. The learned Sub Judge, by an order dated 20.04.2015 allowed the said application and appointed one Advocate Mr.Naveen Prakash as Commissioner and directed him to inspect the suit property and measure the same with the help of a Surveyor and file his report with plan. Feeling aggrieved, the respondent/plaintiff has filed the present Civil Revision Petition.

3. Mr.A.Rajakumar, learned counsel appearing for the petitioner has submitted that originally, the petitioner herein had filed a suit in O.S.No.87 of 2010 on the file of the Sub-Judge, Attur for the reliefs of permanent injunction, Mandatory injunction and compensation. He further submitted that she had also filed an application in I.A.No.318 of 2010 seeking to appoint an Advocate Commissioner to note down the physical features of the suit property; that the learned Sub Judge, Attur, had appointed one Advocate as Commissioner and directed him to inspect the suit property and file his report with plan; that in pursuance of the said order, the Advocate Commissioner had inspected the suit property and filed his report with plan, on 12.08.2010, to which, the respondent had not filed any objection. He further submitted that subsequently, the respondent had filed an application in I.A.No.475 of 2014 requesting to appoint an Advocate Commissioner to note down the length and breadth of the ditch on the western side of the suit property; that the learned Sub Judge had allowed the said application and appointed another Advocate as Commissioner. He further submitted that already one Commissioner has been appointed and the said Commissioner had also filed his report, without scrapping the said report, the learned Sub Judge had appointed

another Advocate Commissioner, which is against the settled principles of law. The learned counsel further submitted that in the petition filed by the respondent, apart from the suit property, they have mentioned some other property and also made a request to inspect the said property, which is also beyond the scope of the suit. The learned counsel also submitted that since the respondent has not filed any objection to the previous report filed by the Commissioner, it is not open to the respondent to file another application seeking to appoint an Advocate Commissioner. He further submitted that without considering the said facts, the learned Sub Judge allowed the said application and therefore, he prayed to allow this Civil Revision Petition by setting aside the order made in I.A.No.475 of 2014.

4. Ms.R.Indhumathi, learned counsel representing Mr.D.Suriyanarayanan, learned counsel on record for the respondent submitted that after inspection made by the previous Commissioner, the construction of the ditch has almost been completed and there was no leakage of drainage water to the suit property; that to note down the said facts, the respondent had filed an application in I.A.No.475 of 2014 to appoint an Advocate Commissioner; and that considering the said fact, the

learned Sub Judge allowed the said application and hence, the said order does not warrant any interference by this Court. Thus, the learned counsel prayed to dismiss this Civil Revision Petition.

5. Heard both sides and perused the materials placed before this Court.

6. A perusal of the typed set of papers filed by the petitioner shows that the petitioner herein had filed a suit in O.S.No.87 of 2010 on the file of the learned Sub Judge, Attur seeking for the following reliefs:-

"(a) directing the defendant to pay compensation at the rate of Rs.1,00,000/-p.a. From August 2009 to the plaintiff by way of damages for illegal drainage of drainage water to the suit property till the date the defendant stop to drain the drainage water to the suit property;

(b) By means of Mandatory Injunction directing to close the ditch projecting the suit property within a specific time fixed by this Honourable Court at the cost of the defendant through Court Officer;

(c) Directing the defendant to pay compensation at the rate of Rs.200/- per square feet on the encroached area of 1515 square feet of land in the suit property by the defendant with subsequent interest at the rate of 24% p.a. per hundred from the date of suit till date of realization;

(d) awarding the costs of the suit."

7. The petitioner herein had also filed an application in I.A.No.318 of 2010 to appoint an advocate Commissioner to note down the physical features of the suit property. Accordingly, an Advocate Commissioner was appointed and the Advocate Commissioner inspected the suit property and filed his report on 12.08.2010. Thereafter, the respondent herein filed an application in I.A.No.475 of 2014 seeking to appoint an Advocate Commissioner to note down the length and breadth of the ditch constructed by the respondent herein on the western side of the suit property and also find out whether there was any leakage of drainage water in the suit property and file a report with plan. The learned Sub Judge allowed the said application and appointed one Mr.Naveen Prakash as Commissioner, directing him to inspect the suit property and measure the suit property with the help of a Surveyor and file his report. Though the respondent herein in the said application, prayed for a direction to the Advocate Commissioner to note down the construction of ditch, which is situated in the western side of the suit property, as well, as the suit property, the learned Sub Judge had passed the impugned order directing the Advocate Commissioner to inspect the suit property only.

8. As already stated above, in the plaint, the petitioner has also prayed for permanent injunction to restrain the respondent herein from letting the drainage water to the suit property. According to the respondent, since construction has been made to the ditch, now, there is no leakage of drainage water to the suit property. This Court is of the view that the Commissioner has to inspect the suit property for ascertaining whether there is any leakage of drainage water to the suit property. Since one Advocate Commissioner has already been appointed and a report has also been filed, the trial Court ought to have re-issued the warrant to the same Commissioner, but it has erroneously appointed some other Commissioner for the same purpose and hence, the said portion of the order alone has to be set aside.

9. In the result, this Civil Revision Petition is partly allowed and the order passed by the Sub Judge in I.A.No.475 of 2014 in OS.No.87 of 2010 appointing another Advocate Mr.Naveen Prakash as Commissioner alone is set aside. The learned Sub Judge, Attur is directed to re-issue the warrant to the previous Commissioner and direct him to inspect the suit

property alone and note down its physical features and file his additional report with plan. No costs. Consequently, connected Miscellaneous Petition is closed.

**02.12.2020**

Index: Yes/No

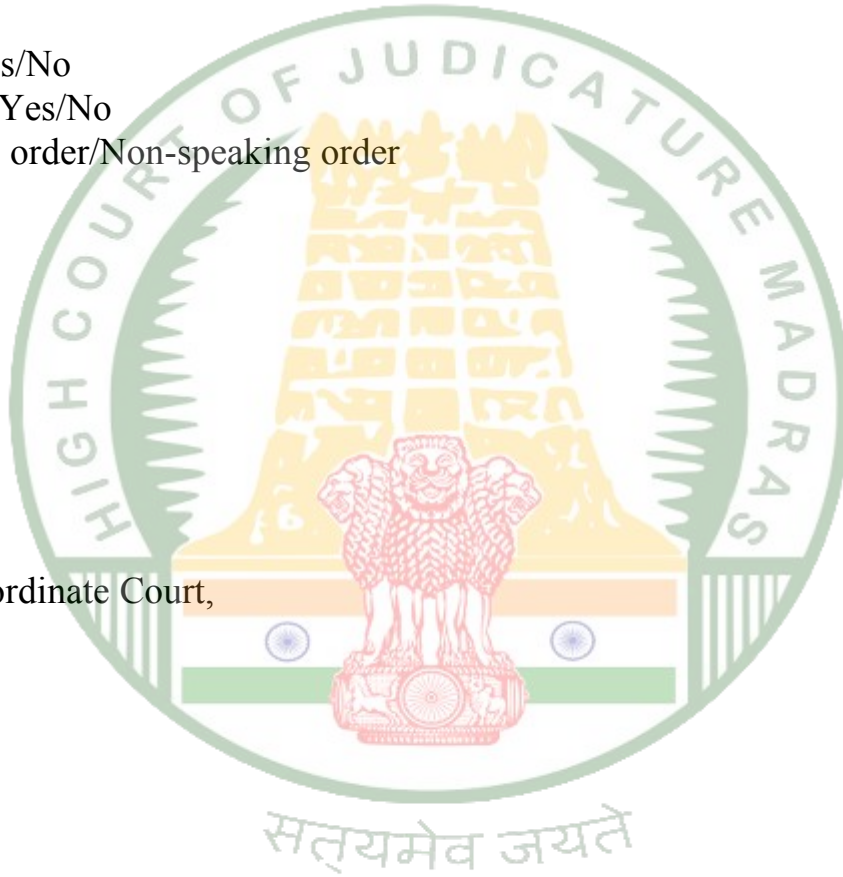
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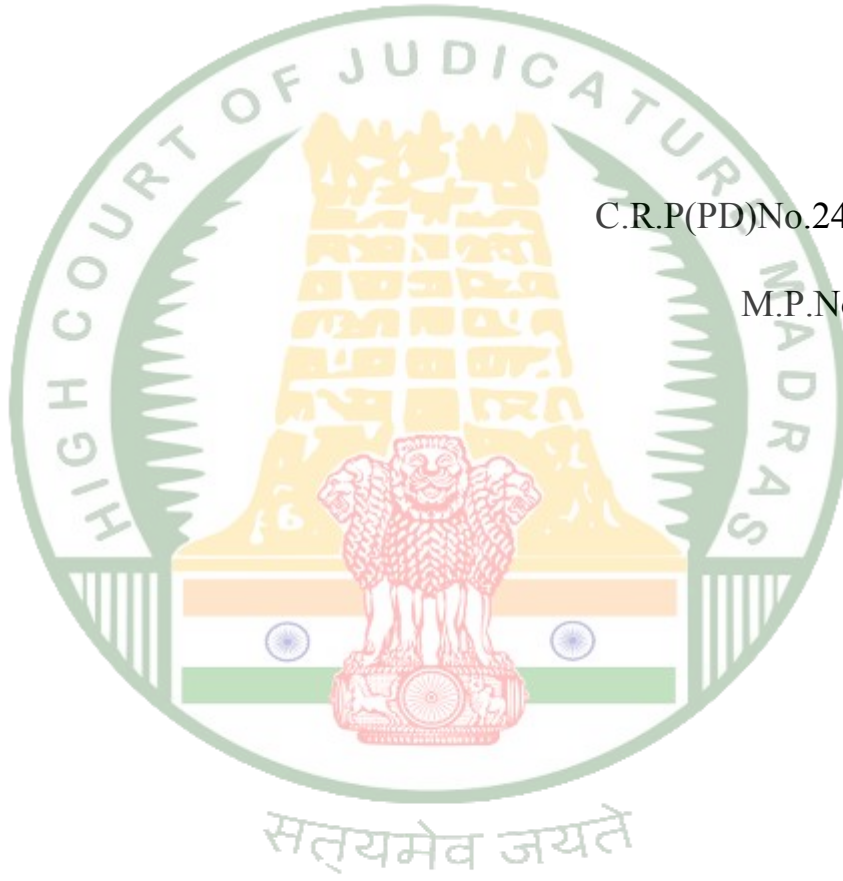
The Subordinate Court,  
Attur.



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**P.RAJAMANICKAM, J.**

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