

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.D No. 2184 of 2018

and

C.M.P.No.13762 of 2018

1. Sivaprakasam

2. Vedhanayagam

.. Petitioners

Vs.

P.R.Nataraj

.. Respondent

Prayer: Petitions filed under Article 227 of the Constitution of India, against the Fair and Final order dated 26.02.2018 in I.A.No.1799 of 2017 in I.A.No.923 of 2016 in O.S.No. 595 of 2015 on the file of the Principal District Munsif Court, Bhavani.

For Petitioners : Mr.S.Kaithamalai Kumaran

For Respondent : Mr.N.Manoharan

ORDER

Aggrieved by the order rejecting the application filed by the petitioner seeking a direction to the same Commissioner to measure the

property with the help of a District Surveyor, the petitioner has come up with this Civil Revision Petition.

2. The suit is filed by the respondent seeking a declaration of title to the suit items 1 & 2, mandatory injunction to remove the wall put up in the suit item 2, permanent injunction restraining the defendants from interfering with his possession and for removing the roofing put up by the defendants in the suit item 3, property.

3. Pending the suit, a Commissioner was appointed and he filed his report and plan on 25.07.2017. The petitioner filed their objections to the said Commissioner's Report. Thereafter, the petitioners came up with the application for re-issuance of the warrant to the same Commissioner for measuring the property with the help of a District Surveyor.

4. The trial Court upon consideration of the facts and circumstances of the case, dismissed the application on the ground that the

warrant cannot be reissued to the Commissioner unless the Court come to the conclusion that the earlier report of the Commissioner is flawed and is liable to be scrapped. A report of the Commissioner can be scrapped only when it is demonstrated that it is factually incorrect or the Commissioner and the Surveyor have not followed the proper procedure in measuring the property. On the above conclusion, the learned trial judge dismissed the application. Aggrieved, the petitioner has come with this Civil Revision Petition.

5. I have heard Mr.Kaithamalai Kumaran, learned counsel appearing for the petitioner and Mr.N.Manoharan, learned counsel appearing for the respondent.

6. Mr.Kaithamalai Kumaran, learned counsel appearing for the petitioner would vehemently contend that the Taluk Surveyor who accompanied the Commissioner did not follow the instructions given to him by the petitioners and therefore, they are entitled to seek reissue of the

warrant to the same Commissioner to measure the property with the Assistance of the District Surveyor. I do not think that such plea could be raised at this stage. Once a Commissioner is appointed with a direction to take the assistance of the Taluk Surveyor and he also inspected the property and filed a report, unless it is shown that the report is factually incorrect, the warrant cannot be reissued to the same Commissioner with a direction to measure the property with the help of a District Surveyor or a new Commissioner cannot be appointed. It is a settled law that appointment of second Commissioner or reissue of warrant to the Commissioner for measuring the property can be made only if it is demonstrated that the report is factually incorrect.

7. Therefore, I do not find any reason to interfere with the order of the trial Court. It is open to the petitioner to examine the Commissioner and the Surveyor and demonstrate that the report is factually incorrect and thereafter seek appointment of a new Commissioner or reissue of the warrant to the same Commissioner.

8. The Civil Revision Petition is therefore dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

21.08.2020

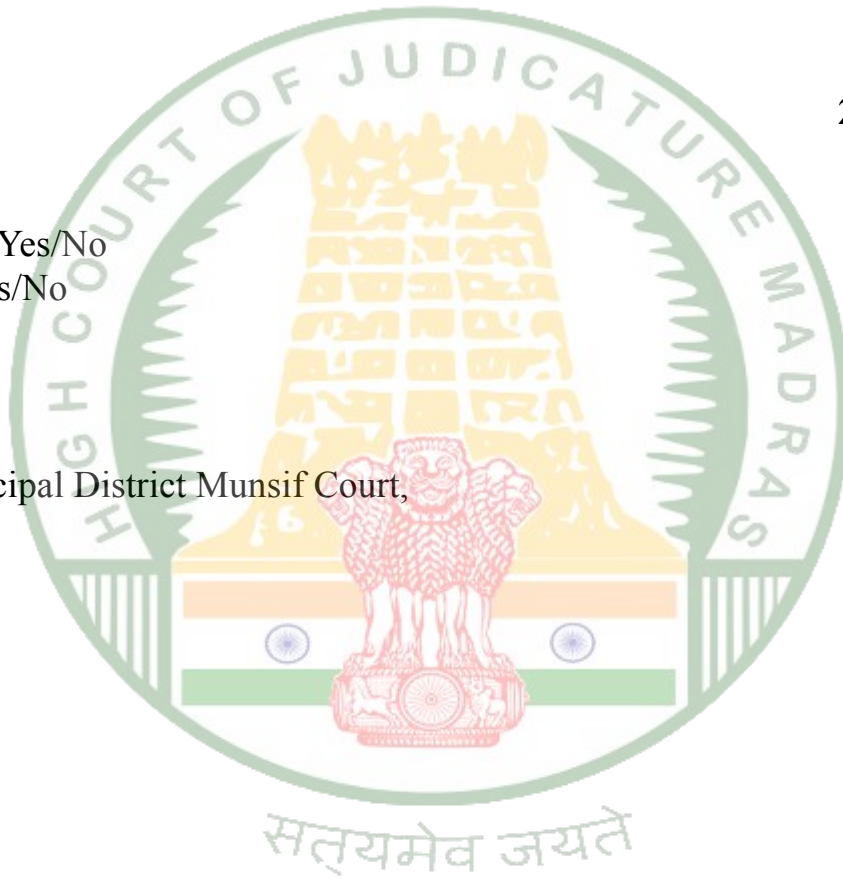
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Internet: Yes/No

Index: Yes/No

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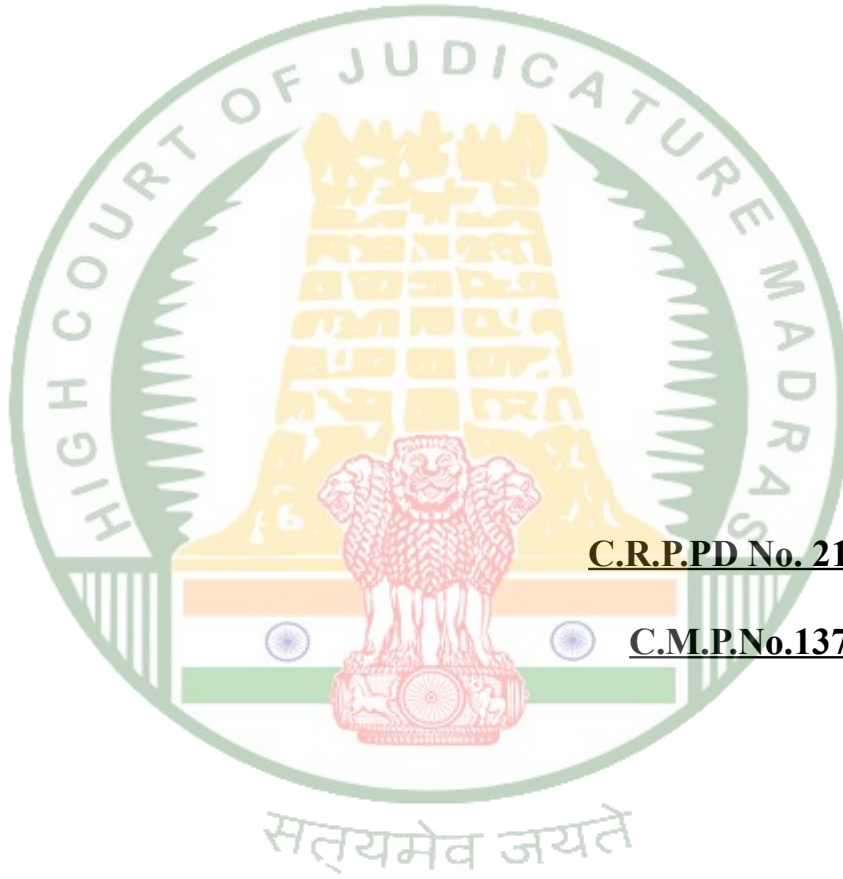
The Principal District Munsif Court,
Bhavani.



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R.SUBRAMANIAN, J.

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