

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2522 of 2018
and CMP No.15365 of 2018

K.P.Kannan

...Petitioner

Vs.

1. G.Radhakrishnan

2. G.Usha

... Respondents

Prayer: The Civil Revision petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 26.03.2018 passed in I.A.No.164 of 2018 in O.S.No.228 of 2018 on the file of the V Additional District Munsif Judge, Coimbatore.

For Petitioner : Mr.K.Myilsamy

For Respondents : Mr.K.B.Viswanathan

ORDER

The defendant in O.S.No.228 of 2018 has come up with this revision challenging the order appointing an Advocate Commissioner to

inspect the suit pathway and file a report on the physical features.

2. The suit in O.S.No.228 of 2018 was laid by the plaintiffs claiming a right of way over the 10 feet pathway and seeking an injunction restraining the defendant from interfering with their enjoyment of the said pathway to reach their house. It was also pleaded that the plaintiffs have no alternative pathway to reach their house. In essence, the claim was one of easement of necessity.

3. Along with the suit, an application in I.A.No.164 2018 was filed by the plaintiffs seeking appointment of a Commissioner to inspect the suit property and file a report on the physical features. This application was resisted by the defendant contending that the plaintiffs have an alternative pathway on the northern side of their property and as such they are not entitled to use the suit pathway. Certain documents have also been produced by the defendant.

4. The learned trial Judge upon a consideration of the evidence on

record concluded that the appointment of a Commissioner would not prejudice the defendants. The Court below further found that a Commissioner's report will help the Court in adjudicating the dispute between the parties effectively and it will also reduce voluminous oral and documentary evidence. On the above conclusions, the learned trial Judge, appointed an Advocate Commissioner to inspect the property and file a report on the physical features. Aggrieved, the defendant has come up with this revision petition.

5. I have heard Mr.K.Myilsamy, learned counsel appearing for the petitioner and Mr.K.B.Viswanathan, learned counsel appearing for the respondents.

6. Mr.K.Myilsamy, learned counsel appearing for the petitioner would vehemently contend that the Commissioner appointment would be necessary only when there is a dispute regarding the existence of the pathway. According to him, the defendant has admitted the existence of pathway and has only denied the right of the plaintiffs to use the pathway.

Therefore, it is for the plaintiffs to establish their right, *dehors* the Commissioner's report by letting in oral and documentary evidence.

7. Contending contra, Mr.K.B.Viswanathan, learned counsel appearing for the respondents would submit that the plaintiffs have claimed a right by way of easement of necessity and it has been specifically alleged that there is no alternative pathway to reach the plaintiffs property. Pointing out that the defendant has claimed in the counter affidavit filed in I.A.No.164 of 2018 that the plaintiff has got an alternative pathway, Mr.K.B.Viswanathan would submit that he can demonstrate it before the Commissioner. According to him, appointment of an Advocate Commissioner will be beneficial to both the parties.

8. I have considered rival submissions.

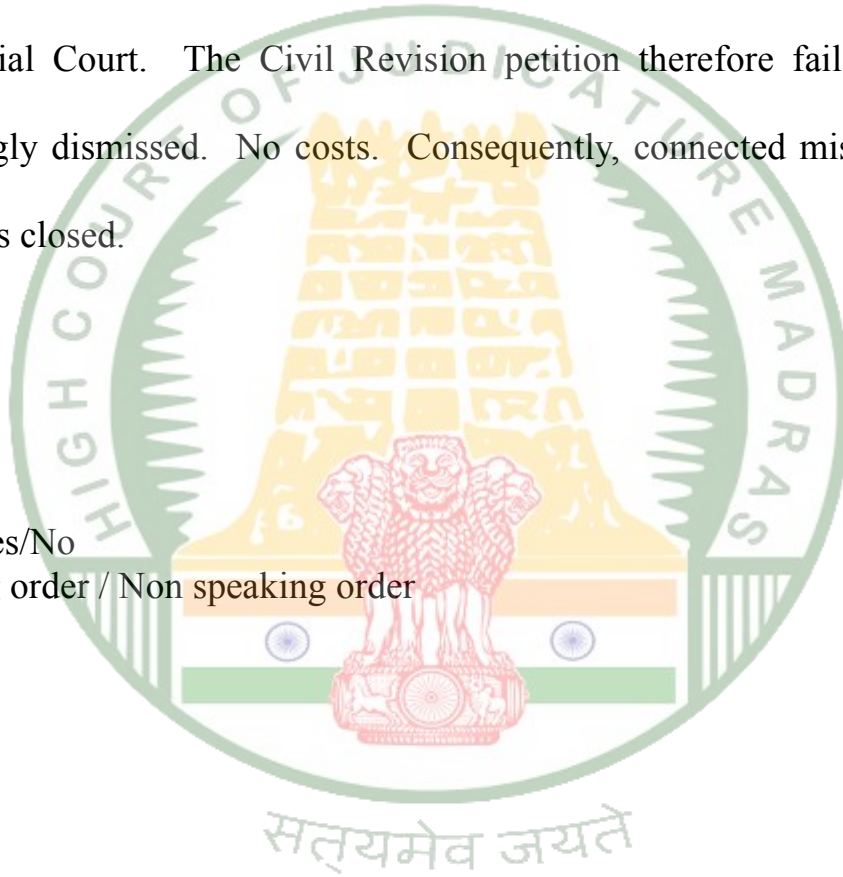
9. I am inclined to agree with the trial Court and the contentions of the learned counsel for the respondents. No doubt, the existence of the pathway is not denied, but the defendant has claimed that the plaintiffs have

got an alternative access, and therefore, they are not entitled to use the suit pathway. The existence or otherwise of an alternative access can be very well demonstrated by a local inspection caused through appointment of a Commissioner. I, therefore, do not find any reason to interfere with the order of the trial Court. The Civil Revision petition therefore fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

vum

Index: Yes/No
Speaking order / Non speaking order

18.08.2020



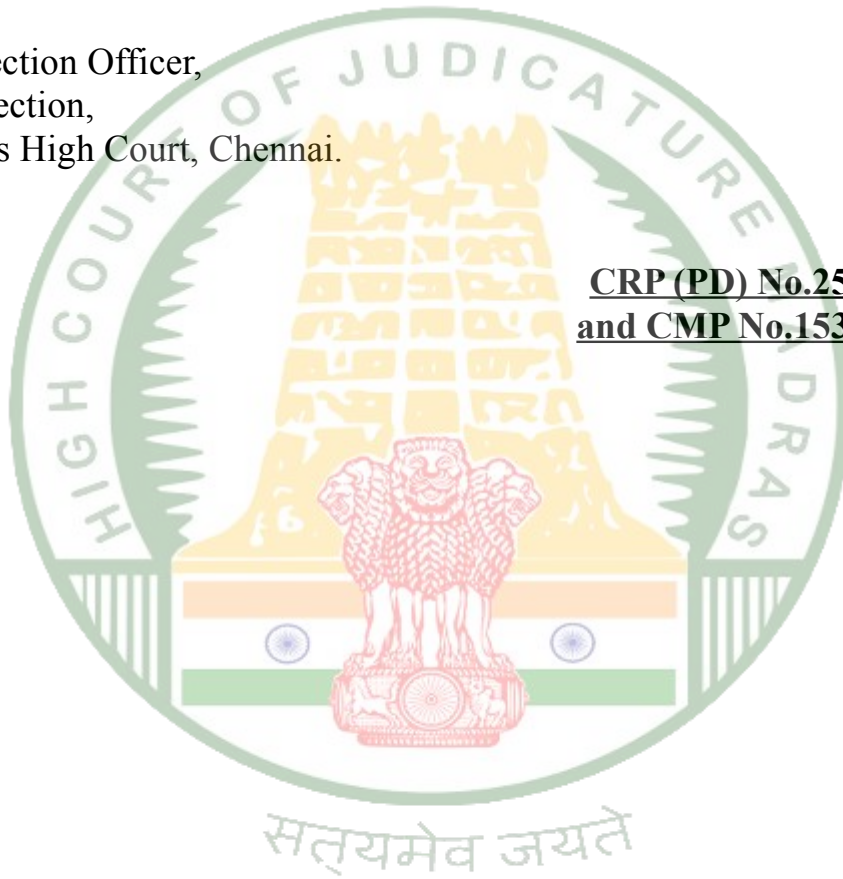
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R.SUBRAMANIAN, J.

vum

To:

1. The Additional District Munsif V,
Coimbatore.
2. The Section Officer,
V.R. Section,
Madras High Court, Chennai.



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