

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD)No.2922 of 2018

and

CMP.No.17095 of 2018

Venugopal Reddy

...Petitioner/Defendant

Vs.

Ajimabee

...Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 06.03.2018 made in I.A.No.25 of 2017 in O.S.No.54 of 2012 on the file of the Additional District Munsif Court, Namakkal.

For Petitioner : Mr.T.L.Thirumalaisamy

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 06.03.2018 made in I.A.No.25 of 2017 in O.S.No.54

of 2012 on the file of the Additional District Munsif, Namakkal.

2. Despite service, the respondent has not appeared either in person or through counsel duly instructed.

3. The defendant in the suit in O.S.No.54 of 2012 has come up with this Civil Revision Petition challenging an order reissuing the warrant to the Commissioner to re-inspect and measure the suit property. The suit is one for permanent injunction restraining the defendant from interfering with the plaintiff's right to construct over the suit wall. Along with the suit an application for appointment of Commissioner was made and the Commissioner also inspected the suit property and filed his report and plan. While so, it appears that the plaint was sought to be amended and the said application was dismissed. Thereafter, when the Trial was on, the plaintiff came up with the present application seeking re-issuance of the warrant. The said application was resisted by the respondent/defendant contending that unless the earlier report is set aside and in the absence of any dispute regarding the measurement of the property, the warrant cannot be reissued.

The Trial Court however, concluded that the measurement of the property is necessary and allowed the application for re-issue of warrant, and appointed Mr.T.Sivakumar as a Commissioner requiring him to measure the property with the help of a Surveyor.

4. Heard, Mr.T.L.Thirumalaisamy, learned counsel appearing for the petitioner.

5. The law requiring an appointment of a second Commissioner or re-issue of the warrant to the same Commissioner is well settled. This Court has repeatedly held that the said exercise cannot be done without scrapping the earlier report of the Commissioner. Admittedly, the Trial is on, the Commissioner has not been examined. The Court has not come to the conclusion that the earlier report of the Commissioner requires to be scrapped. There is no finding regarding any mistake in the procedure adopted by the Commissioner in measuring the suit wall.

6. In view of the above, the Trial Court was not justified in

appointing another Commissioner to measure the property without scrapping the earlier report. Hence, the order challenged in this Civil Revision is liable to be interfered with and the same is accordingly set aside. This Civil Revision Petition is allowed. The application in I.A.No.25 of 2017 will stand dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

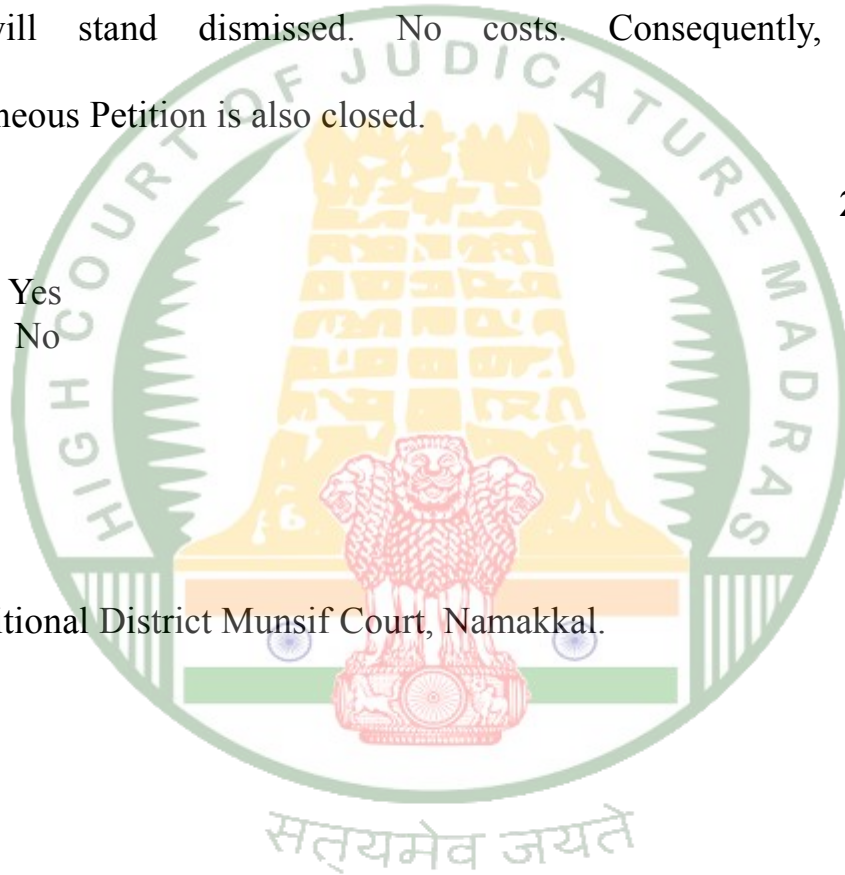
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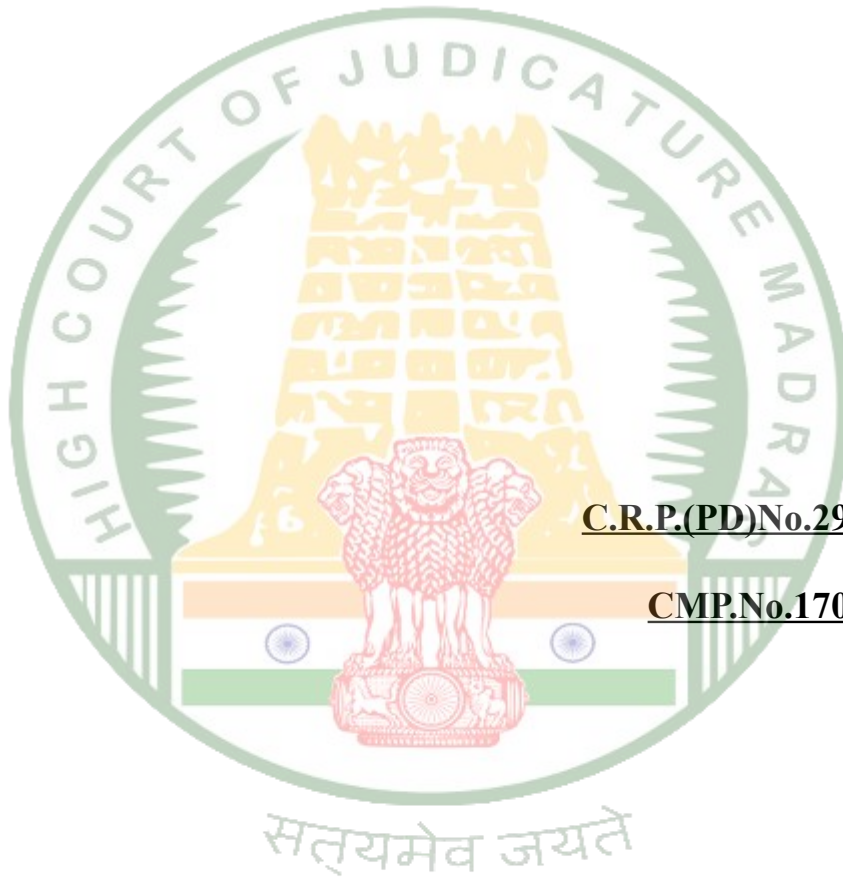
To

The Additional District Munsif Court, Namakkal.



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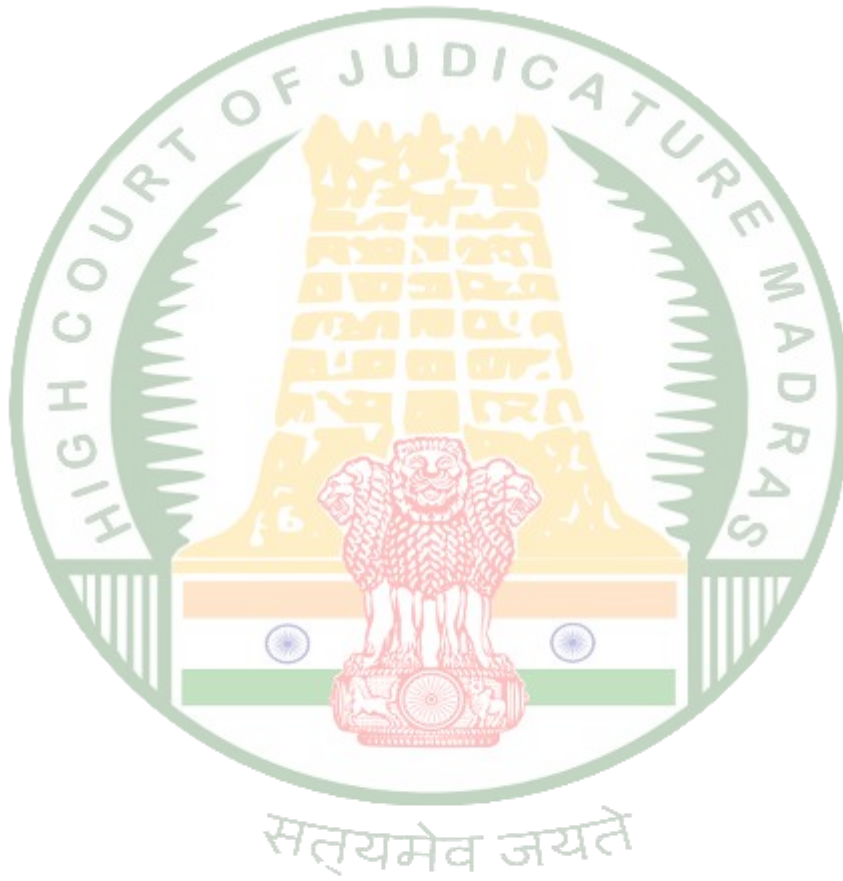
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