

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.306 of 2018 and
CMP No.1661 of 2018

Chakkarapanipillai ... Petitioner

Vs

1. The District Collector,
Thiruvannamalai District,
Thiruvannamalai – 606 604.
2. The Block Development Officer,
Block Development Office,
Cheyyar 604407
Tiruvannamalai District.
3. Panchayat President,
Papanthangal Village Panchayat,
Pappanthangal Village, Cheyyar Taluk,
Tiruvannamalai District.
4. Prema
5. Rajkumar ... Respondents

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 27.11.2017 passed in I.A.No.737 of 2017 in O.S.No.206 of 2012 on the file of the Additional District Munsif Court, Cheyyar.

For Petitioner : Mr.P.Mani

For Respondents :Mr.Y.T.Aravind Gosh,
Additional Government Pleader
(for R1 and R2)
No appearance for R3 to R5

ORDER

The plaintiff in O.S.No.206 of 2012 has come up on revision, challenging an order, dismissing his application for appointment of a Commissioner to note down the physical features of the suit properties and the adjacent properties.

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2. The suit was originally laid by the plaintiff seeking permanent injunction, restraining the respondents 1 to 3 from laying a road over his

property. Claiming that during the pendency of the suit, the respondents 1 to 3 had laid the road and while doing so, they have removed the pipeline that was used to drain the excess rain water in to the Eri channel situate on the other side of the road, the plaintiff amended the plaint, seeking a relief of mandatory injunction. The amended plaint was filed on 14.11.2016. After filing the amended plaint, the plaintiff filed the present application in IA No.737 of 2017, seeking appointment of a Commissioner to note down the physical features of the property, so as to establish all the land owners have underground pipelines from their land to drain excess rain water in to the Eri channel situate on the other side of the Road in order to prove that there was one such under ground pipe which was used by him to drain the excess rain water from his land into the Eri Channel.

3. The respondents 1 to 3 namely the District Collector, Thiruvannamali District, the Block Development Officer, Cheyyar 604407, Tiruvannamali District and the Panchayat President, Papanthangal Village Panchayat, Pappanthangal Village, Cheyyar Taluk, Tiruvannamalai District did not appear and respond to the interlocutory application. The private

respondents namely the respondents 4 and 5 filed counter claiming that they are not necessary parties to the suit itself. The trial Court, however dismissed the application on the ground it is belated.

4. I am unable to sustain the reasons of the trial Court. As already pointed out, the plaint was amended only in the year 2016 and the amended pliant was filed on 14.11.2016. Soon thereafter, the petition for appointment of Commissioner was filed within a year i.e., on 09.11.2017. Admittedly, the trial of the suit had not commenced. The very nature of the suit requires evidence to show that there was a pipeline which was used by the plaintiff to drain excess rain water into the Eri situate on the other side of the road. That evidence cannot be conveniently produced without having the Commissioner being appointed.

5. In view of the above the trial Court was not justified in rejecting the application. The Civil Revision petition is therefore allowed. IA No.737 of 2017 will stand allowed. The trial Court is directed to appoint the Commissioner within a period of 30 days from the date of receipt of a

copy of this order and proceed with the suit in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

11.11.2020

Note: Time bound order

vum

Index: Yes/No

Speaking order / Non speaking order

To

The Additional District Munsif Court, Cheyyar.

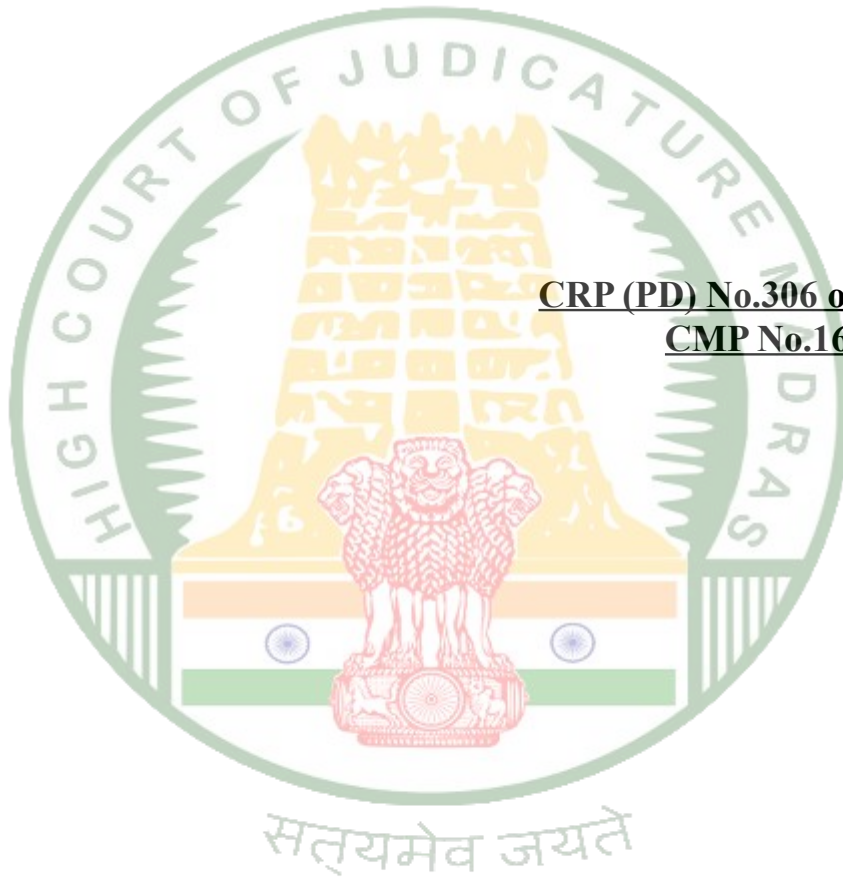


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