

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.97 of 2018 and
CMP No.510 of 2018

1. The President,
Soorthal Kovil Madurai Veeran
Kual Theiva Koil,
7/1, Annamadam Street,
Sulur – 641 402.
 2. K.Kandasamy
 3. D.Chandramohan
- ... Petitioners

- Vs.
1. S.M.Ramalingam
 2. R.Rukmani
 3. S.R.Saikumar
 4. Kalaipithan
 5. Smt.K.Mohnasundari
 6. K.Suthanthira Bharathi
 7. K.Senmthilkumaran
- ... Respondents

Prayer: The Civil Revision petition filed under Article 227 of the

Constitution of India, against the fair and final order dated 08.11.2017 passed in I.A.No.993 of 2016 in O.S.No.470 of 2016 on the file of the III Additional District Court, Coimbatore.

For Petitioners : Mr.T.S.Baskaran

For Respondents : Mr.C.P.Siva Mohan

ORDER

The defendants in O.S.No.470 of 2016 have come up with this revision, challenging an order made in I.A.No.993 of 2016, appointing a Commissioner to note down the physical features and find out the extent of encroachment over the suit properties.

2. The suit itself is filed for a declaration that the plaintiffs 1 to 4 have an obligation to perform the duty of development of Annamadam besides Soorathal Kovil, declaring the Trust Deed dated 04.04.2014 as sham and nominal, permanent injunction restraining the defendants interfering with the peaceful possession and enjoyment of the suit properties by the plaintiffs and making any encroachments by the defendants in the suit property, for mandatory injunction, directing the defendants to remove the encroachment in item no. 2 of the suit schedule property and also the

construction being made in the space measuring about 1,215 square feet (56 ½ feet X 21 ½ feet) and for costs.

3. Pending suit, the plaintiffs sought for appointment of a Commissioner to visit the property, to note down the physical features and to submit his report with plan to enable the Court to assess the extent of encroachment being made by the respondents in the suit property, more fully described in the schedule to the petition hereunder and also the adjoining temple property on the North Eastern side of the property and pass such further order as may be deemed fit. The suit item 1 has been shown as the schedule to the Commissioner application.

4. This application was opposed by the defendants contending that there is no need for appointment of Commissioner, when the plaintiffs have sought for a relief of mandatory injunction for removal of construction within a specific measurement, they cannot now attempt to collect evidence through appointment of Commissioner, in order to prove the case of alleged encroachment.

5. The trial Court, however, concluded that the Commissioner is necessary to find out the physical features and the exact measurements of

the encroachment. On the said conclusion, the trial Court appointed an Advocate Commissioner. Aggrieved, the defendants are on revision.

6. I have heard Mr.T.S.Baskaran, learned counsel appearing for the petitioners and Mr.C.P.Siva Mohan, learned counsel appearing for the respondents.

7. Mr.T.S.Baskaran, learned counsel appearing for the petitioners would vehemently contend that the very nature of the suit and the prayer therein does not warrant appointment of an Advocate Commissioner. Pointing out that the prayer is one for mandatory injunction for removal of superstructure of a specific extent along with liner measurement, the plaintiff cannot seek to improve upon their case by seeking an appointment of a Commissioner.

8. Contending contra, Mr.C.P.Siva Mohan, learned counsel appearing for the respondents would submit that the exact nature of the encroachment will have to be determined only upon a Commissioner being appointed. I have considered the rival contentions.

9. The prayers in the suit have been extracted earlier. The plaintiffs have come out with the specific case that there is an encroachment

by putting up a building to an extent of 1,215 Square feet along with liner measurements (56 ½ feet X 21 ½ feet). When such a specific plea has been projected by the plaintiffs, it is not open to them to improve upon the case in order to collect evidence by seeking appointment of Commissioner. Though Mr.C.P.Siva Mohan would submit that the measurements are given only with regard to the buildings and the defendants had encroached upon some more land also, the very contention of Mr.C.P.Siva Mohan, that the measurements are only in respect of buildings and the defendants have encroached upon some more lands also would make it clear that the appointment of Commissioner is sought for only to collect evidence regarding the encroachment which is impermissible under law.

10. I am, therefore of the considered opinion that the trial Court erred in appointing a Commissioner, considering the very nature in the prayer in the suit. Therefore, the order of the trial Court is liable to interfered with and it is accordingly set aside. The Civil Revision petition is allowed and the application in I.A.No.993 of 2016 in O.S.No.470 of 2016 on the file of the III Additional District Court, Coimbatore will stand dismissed. No costs. Consequently, connected miscellaneous petition is

closed.

04.09.2020

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Index: Yes/No

Speaking order / Non speaking order

To

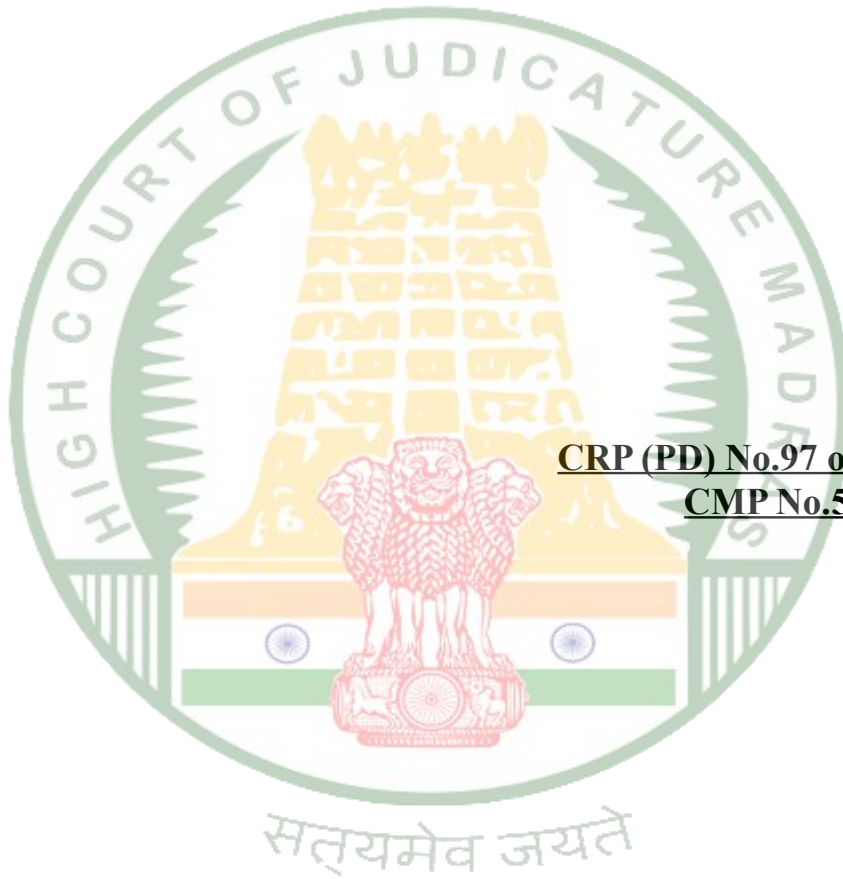
The III Additional District Court,
Coimbatore.



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R.SUBRAMANIAN, J.

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