

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP(PD).No.2999 of 2014

and

M.P.No.1 of 2014

Appukutti

...Petitioner/ Plaintiff

Versus

1.Pappathi

2.Meenachi

3.Chellamuthu

4.Subramani

5.Duraisamy

6.Palanisamy

...Respondents 1 to 5/
Defendants 2 to 6 & 8

7.Deival

...7thRespondent/
7th Defendant

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the order fair and decreetal order dated 01.07.2014, made in I.A.No.591 of 2014 in O.S.No.192 of 2013 on the file of the learned District Munsif, Kangayam by allowing this Civil Revision Petition.

For Petitioner

: Ms.Indira Priyadarshini
for M/s.N.Manokaran

For Respondent

: No appearance

ORDER

This Civil Revision Petition has been filed against the order passed by the learned District Munsif, Kangeyam in I.A.No.591 of 2014 in O.S.No.192 of 2013, dated 01.07.2014.

2 The plaintiff in the suit O.S.No.192 of 2013 is the revision petitioner herein.

3 Brief facts of the case are as follows:

(i) The revision petitioner has filed a suit in O.S.No.192 of 2013 for declaration of his title and for permanent injunction. Along with the suit, he has also filed an application in I.A.No.927 of 2013 for appointment of Advocate Commissioner and the same was ordered. The Advocate Commissioner inspected the suit property and filed a report on 02.08.2013 and thereafter, no objection appears to have been filed on behalf of the defendants and the matter was posted for trial.

(ii) The defendants have filed IA.No.591 of 2014 before the learned District Munsif, Kangayam, for appointment of Advocate Commissioner for certain points of reference as mentioned in the affidavit and the same was allowed and the learned District Munsif,

Kangeyam, by observing that no prejudice will be caused if the Advocate Commissioner, has not specified the details of the width of the mud portion and the distance between the mud portion and pathway, where the pathway is in the North of S.F.304 /1 and accordingly, allowed the IA.No.591 of 2014. Hence, the Civil Revision petition.

4 Heard the learned counsel for the petitioner and perused the documents placed on record.

5 Today(20.01.2020), when the matter was call at 12p.m., there is appearance on behalf of the respondent.

6 The learned counsel for the petitioner would contend that when the defendants have not chosen to file any objection for the Advocate Commissioner Report filed in I.A.No.927 of 2013, subsequent appointment of Advocate Commissioner is bad in law.

7 On a perusal of the records it is clear that the Advocate Commissioner was appointed in I.A.No.927 of 2013 and he has filed a report on 02.08.2013 after conducting the inspection on

25.07.2013. When such being the case in the absence of any objection being filed to the report of the Advocate Commissioner nor any application for scraping the report of the Advocate Commissioner by raising the necessary grounds, as contemplated under the judicial proceedings, the question of appointing the second Advocate Commissioner does not arise. In this regard, it appears that the learned District Munsif, Kangeyam, has mechanically allowed the application and hence, the order passed in I.A.No.591 of 2004 is hereby set aside. It is open to the respondent to file necessary application for appropriate relief, if he be so advised.

8 In the result, the Civil Revision Petition stands allowed with the above observations and the order passed by the learned District Munsif, Kangeyam, in I.A.No.591 of 2014 in O.S.No.192 of 2013, dated 01.07.2014 is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

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20.01.2020

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Speaking Order:Yes/No

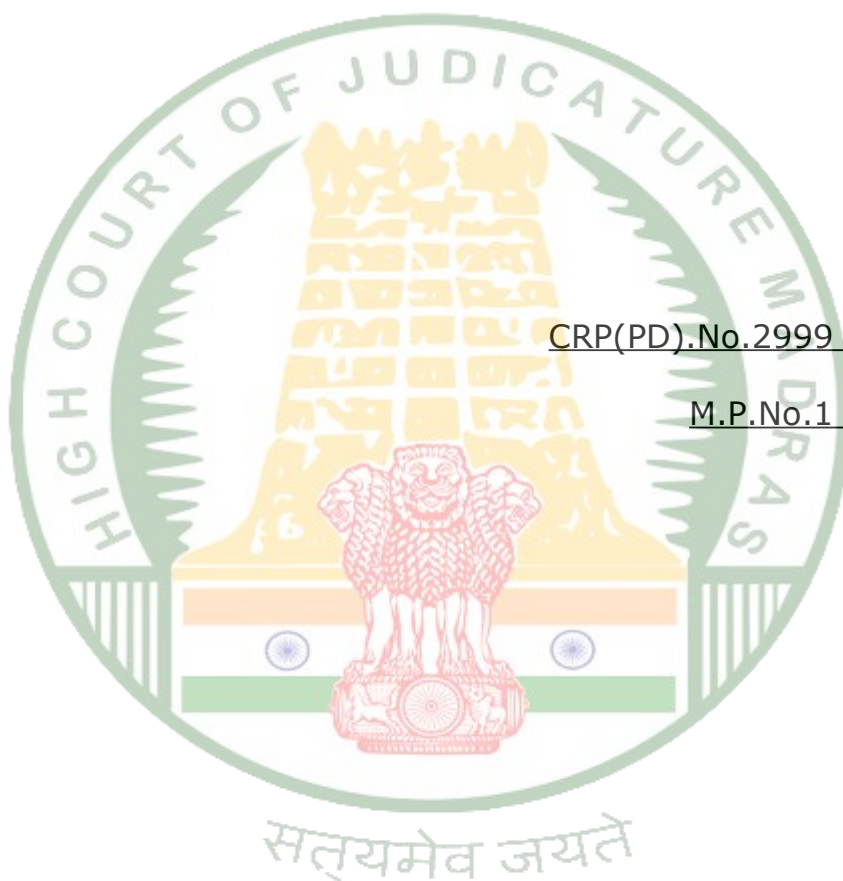
To

The District Munsif, Kangayam.

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and M.P.No.1 of 2014

RMT.TEEKAA RAMAN., J.

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