

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP(PD).No.2294 of 2020
and
CMP.No.14373 of 2020

1.Munuswamy
2.Govindasamy
3.Venkatachalam
4.Krishnamoorthy
5.Ezhumalai

...Petitioners/Plaintiffs

.. Vs ..

1.Murugaiyan
2.Anbarasan

...Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to allow this Civil Revision Petition and to set aside the judgment and decree dated 24.11.2020 made in CMA.No.3 of 2020, on the file of the Principal Subordinate Judge, Tindivanam, partly reversing the order and decree made in I.A.No.426 of 2019 in O.S.No. 135 of 2019, on the file of the District Munsif – Cum – Judicial Magistrate, Vanur.

For Petitioners : Mr.D.Ravichander
For Caveator : Mr.S.Giritharan

JUDGMENT

(The case has been heard through video conference)

This Civil Revision Petition has been filed to set aside the judgment and decree passed in CMA.No.3 of 2020, on the file of the Principal Subordinate Judge, Tindivanam, dated 24.11.2020.

2.The plaintiffs in the suit O.S.No.135/2019 are the revision petitioners herein.

3.The revision petitioners/plaintiffs have filed the above said suit in O.S.No. 135 of 2019 for declaring their easementary right over the "B" Schedule property to reach the "A" Schedule Property from the North-Sourth Mathur-Pondy Road and for permanent injunction. According to the petitioners, there is no alternative pathway, which was disputed by the respondents/defendants by an order dated 07.03.2020 made in I.A.No.426 of 2019, before the learned District Munsif, Vanur, wherein, the learned Trial Judge had granted interim injunction till the disposal of the suit in O.S.No.135 of 2019. As aggrieved against the said order, the defendants/respondents herein have filed an application before the learned Principle Sub-Judge, Tindivanam, in CMA.No.3 of

2020 and the learned Sub-Judge has modified the order and allowed the above said CMA and the order has been remitted back to the Trial Court for appointment of Advocate Commissioner to inspect the property has to the existence of the alternative pathway as contended by the respondent. Hence, the Civil Revision Petition.

4. Heard the learned counsel for the petitioners and the learned counsel for the caveator.

5. The learned counsel appearing for the petitioners would submit that with regard to the direction, Advocate Commissioner petition has been filed before the Munsif Court and till the disposal of the Advocate Commissioner report, revision petitioners/plaintiffs seek the pathway to reach the "A" Schedule Property.

6. The learned counsel appearing for the respondents herein/defendants would contend that the suit itself is for permanent injunction and he is ready to cooperate with the Trial, taking into consideration that in the schedule of the property viz., "B" Schedule property, length and breadth is not mentioned and therefore, this Court directs the learned District Munsif cum Judicial Magistrate, Vanur

to appoint an Advocate Commissioner to inspect the "B" Schedule property with reference to existence of any other alternative pathway. The petitioners are hereby directed to file a necessary application for Advocate Commissioner, as directed by the learned Principal Sub-Judge, Tindivanam, and after appointment of the Advocate Commissioner, the Advocate Commissioner has to note down the physical features and also with reference to existence of alternate pathway as contended by the respondent and file a report on or before 18.01.2021, on such report being filed, the learned Trial Court is directed to dispose of IA.No.426 of 2019 on or before 21.01.2021.

7. Admittedly, "A" Schedule and "B" Schedule property originally belongs to same person and subsequently, during the expansion of the branches, "A" Schedule property was given to the one branch and "B" Schedule property was given to the another branch. Hence, *prima facie*, this Court finds that for reaching "A" Schedule property, agriculture labour may be permitted to enter "B" Schedule property is necessary, with regard to the plea of alternative pathway, it will be decided after the Advocate Commissioner Report and there will be direction to the respondents to the limited extent, till the dispose of I.A.

8.With the above direction, this Civil Revision Petition disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

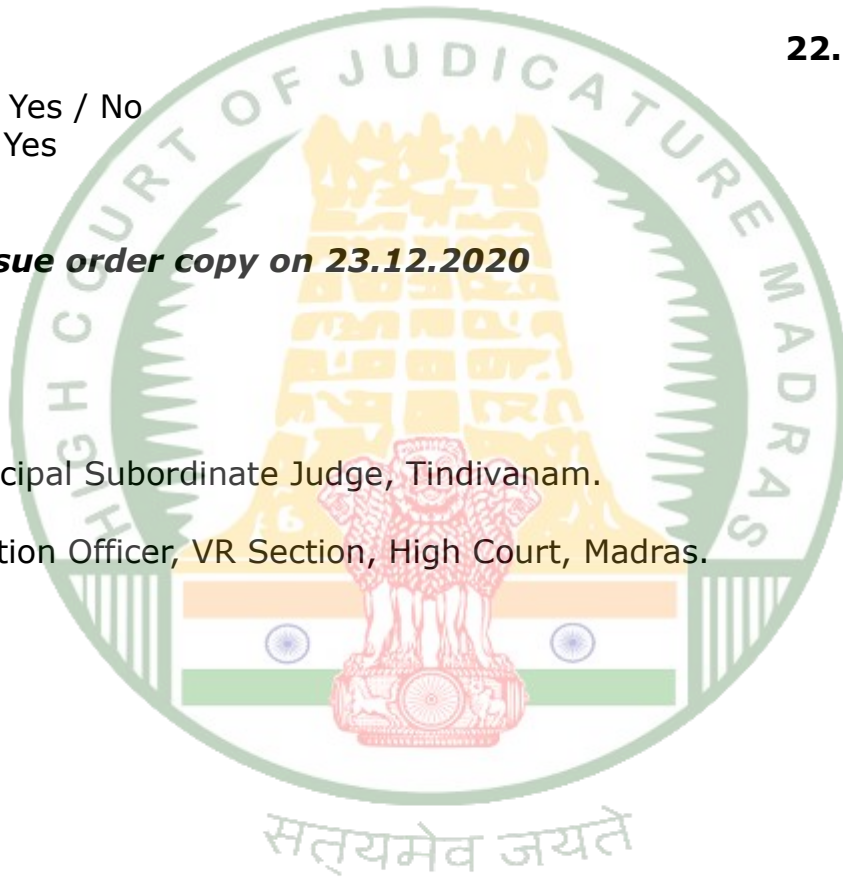
22.12.2020

Index : Yes / No
Internet : Yes
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Note: Issue order copy on 23.12.2020

To

- 1.The Principal Subordinate Judge, Tindivanam.
- 2.The Section Officer, VR Section, High Court, Madras.

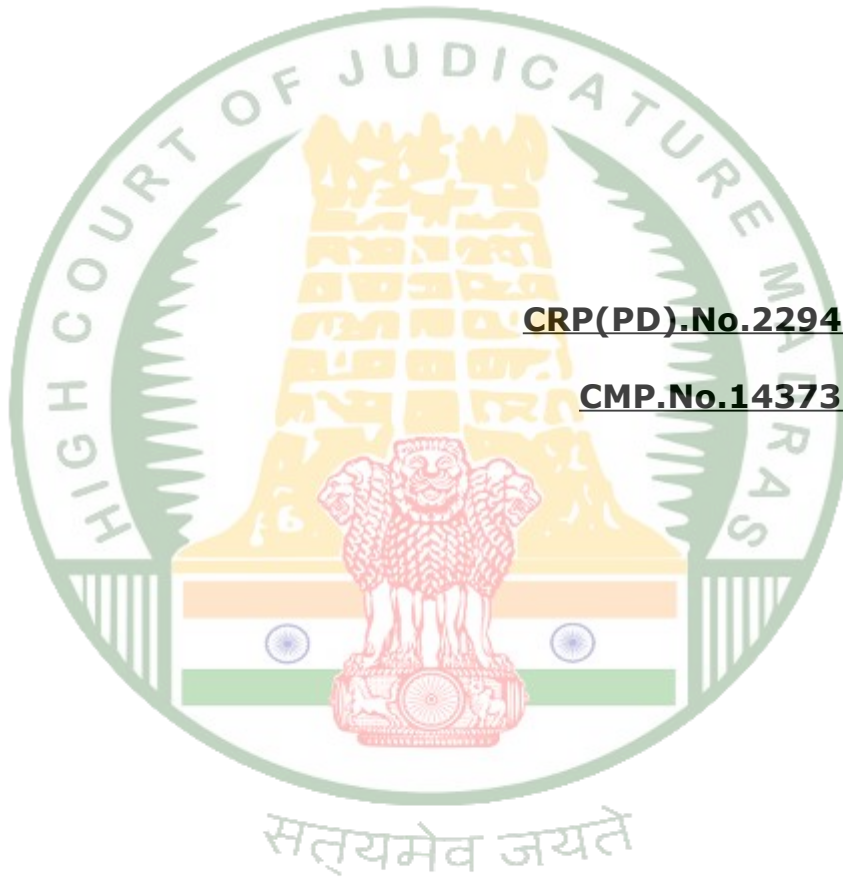


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RMT.TEEKAA RAMAN. J.

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