

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition(NPD) No. 98 of 2017

and
CMP No.490 of 2017

Ruthrasamy

... Petitioner

Vs

1. The State of Tamil Nadu
rep. by its District Collector,
Tiruppur District,
Tiruppur.

2. The Tahdildar,
Dharapuram Taluk,
Dharapuram.

3. The Divisional Engineer,
Highways Department,
Tiruppur.

4. The Assistant Divisional Engineer,
Highways Department,
Kangayam,
Tiruppur District.

5. The Assistant Engineer,
Highways Department,
Kangayam,
Tiruppur District.

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 04.10.2016 made in I.A.No.44 of 2015 in A.S.No.42 of 2014 on the file of the learned Subordinate Judge, Dharapuram.

For Petitioner : Mr. VinothRaja,
for N.Manokaran

For Respondent : Mr. Aravind Gosh,
Gov. Advocate,
for R1 & R2

: No appearance
for R3 to R5

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 04.10.2016 made in I.A.No.44 of 2015 in A.S.No.42 of 2014 on the file of the learned Subordinate Judge, Dharapuram.

2. The petitioner has filed a suit in O.S.No. 152 of 2011 on the file of the District Munsif Court, Kangayam, for declaration with reference to compound wall mentioned as AB and also for injunctions and the suit was decreed by a judgment and decree dated 02.09.2014. Thereafter, the respondents/State had filed an appeal in A.S.No.42 of 2014 on the file of the Sub Court, Dharapuram. In the said appeal, the respondents/State filed an application in I.A.No.44 of 2015 to appoint

an Advocate Commissioner to note down the physical features and also to measure the property with the help of Taluk Surveyor and the same was allowed on 04.10.2016 by the First Appellate Court/Sub Court, Dharapuram. Challenging the said order, the Civil Revision Petition has been filed before this Court.

3. The learned counsel for the respondent would submit that before the trial Court, though an Advocate Commissioner was appointed to note down the physical features, the Commissioner has visited the suit properties without any notice to the respondents/State and based on the report of the Exparte Commission, the trial Court decreed the suit and hence, the respondents/State filed the application to appointment of Advocate Commissioner before the First Appellate Court only for the reason that if the AB Wall is measured with the help of qualified surveyor, the truth will come and that will be helpful to decide the appeal. If the suit AB Wall is measured with the help of Surveyor, it will be helpful to decide as to whether the compound wall is within the area of the respondents High Ways or the petitioner's patta land. Therefore, the First Appellate Court, after considering all the facts appointed an Advocate Commissioner and hence, there is no merit in the revision.

4. Heard both sides and perused the materials available on records carefully.

5. Admittedly, the petitioner had filed the suit against the respondents/State in O.S.No. 152 of 2011 on the file of the District Munsif, Kangayam and the trial Court, by a judgment and decree dated 02.09.2014 decreed the suit. The respondents/State have filed an appeal in A.S.No.42 of 2014 before the Sub Court- Dharapuram. During the pendency of the Appeal, the respondents/State had filed an application in I.A.No. 44 of 2015 to appoint an Advocate Commissioner to measure the property with qualified Surveyor and the same was allowed on 04.10.2016.

6. From the perusal of the records, it could be seen that the prayer sought for by the petitioner herein in the plaint itself is to declare the compound Wall AB shown in the plaint schedule belongs to the petitioner/plaintiff and also for injunction to restrain the respondents/State not to encroach the same. Therefore, the measurement with the help of the Surveyor is absolutely necessary and also the trial Court has not stated whether the Commissioner earlier appointed by the Court has measured the property with the help of qualified Surveyor. Under these circumstances, this Court does not find any perversity in the order passed by the First Appellate Court. If the property is measured with the help of qualified surveyor, it will be helpful to the First Appellate to find out the truth as to whether the compound wall mentioned in A and B in the plaint schedule is within the

property of the petitioner/plaintiff or in the area of the Highways. Therefore, under the circumstances, there is no merit in the revision and the revision is liable to be dismissed.

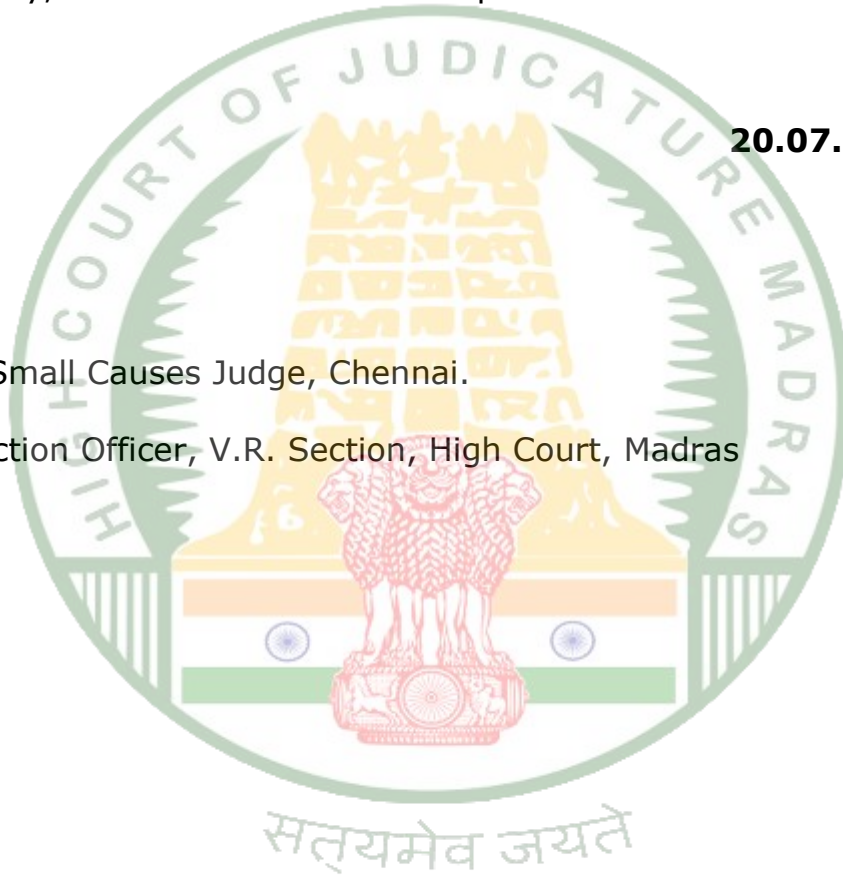
7. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.07.2020

mrp

To

1. The XI Small Causes Judge, Chennai.
2. The Section Officer, V.R. Section, High Court, Madras

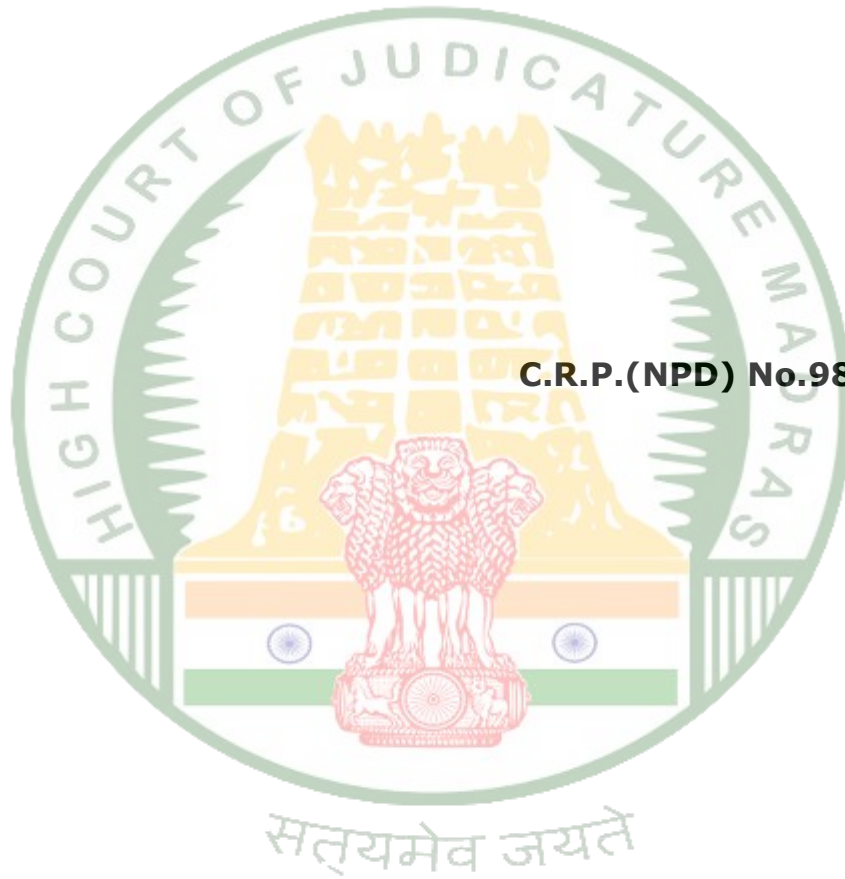


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C.R.P NPD No.98 of 2017

P.VELMURUGAN,J.

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C.R.P.(NPD) No.98 of 2017

20.07.2020

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