

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 3222 of 2018

and

C.M.P.No. 18396 of 2018

1.Kandasamy

2.Sellammal

3.K.K.Balasubramanian ...Petitioners/Defendants

Vs.

Ponnusamy

..Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.07.2018 made in I.A.No.187 of 2018 in O.S.No. 264 of 2012 on the file of the Principal District Munsif, Namakkal.

For Petitioners : Mr.Rajaramani for Mr.V.R.Annagandhi

For Respondent : No Appearance

O R D E R

The defendants in O.S.No. 264 of 2012 have come up with this revision, challenging the order passed by the Trial Court in I.A.No. 187 of 2018.

2. The application was for reopening I.A.No.1419 of 2014, which was closed on 15.12.2017. The suit was one for declaration and injunction. Pending suit, the defendants filed an application in I.A.No.1419 of 2014 for appointment of a commissioner. The same was allowed and a Commissioner was appointed by an order dated 15.06.2015. Despite such appointment, the Commissioner did not file any report. Since no report was filed for nearly 2 ½ years, the Court closed the Commissioner application on 15.12.2017. Soon thereafter, on

02.03.2018, the petitioners came up with the application seeking to reopen the Commissioner application, which was closed on 15.12.2017. The learned Trial Judge had dismissed the application concluding that the petitioners have not done anything to cooperate with the Commissioner to visit the property.

3. I have heard Mr.Rajaramani for Mr.V.R.Annagandhi, learned counsel for the petitioner. The respondent, though served, is not appearing either in person or through counsel duly instructed.

4. Mr.Rajaramani would vehemently contend that the Trial Court was not right in dismissing the application. He would point out that the application for appointment of Commissioner itself was closed only on 15.12.2017 and the petitioners were approached the Court for reopening it within a reasonable time. It is also claimed that the Commissioner did not chose to visit the property. He would also contend that the petitioners cannot be blamed for Commissioner's inaction in not visiting property for more than 2 ½ years. He would also submit that the fee fixed by the Court to the Commissioner was also paid. The Trial Court had dismissed the application only on the ground that there has been inaction on the part of the petitioner. The entire blame for the situation, that has been created, cannot be put on the petitioners alone. Once the Commissioner is appointed by the Court and the fee fixed by the Court is also paid, it is for the Commissioner to do his work as per the warrant issued by the Court. It is not known as to why the Court has not chosen to pull up the Commissioner for not filing his report within a reasonable time. The application that was kept pending for 2 ½ years and eventually closed on 15.12.2017. Soon thereafter, this petition has been filed. I therefore, find that the Trial Court was not right in dismissing the application. The Trial Court must have appointed another Commissioner and should have directed him to file a report. Once the need for Commissioner has been accepted and the Court had chosen to appoint a Commissioner the Court cannot deprive an opportunity of having a Commissioner visit the property to the defendants becuase of its own inaction and inaction on the part of the Officer, who was chosen by the Court to perform a certain duty.

5. In view of the above, this Civil Revision petition is allowed, the order of the Trial Court is set aside, I.A.No. 187 of 2018 will stand allowed, I.A.No. 1419 of 2014 will stand reopened. The Trial Court is directed to appoint another Commissioner within fifteen days from the date of receipt of copy of this order and have him conduct inspection at the

earlist and file a report. The petitioners shall pay the remuneration fixed for the new Commissioner also. The Trial Court shall issue notice to the earlier commissioner, requiring him to return the warrant along with the remuneration that has been paid by the petitioners.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

kkn

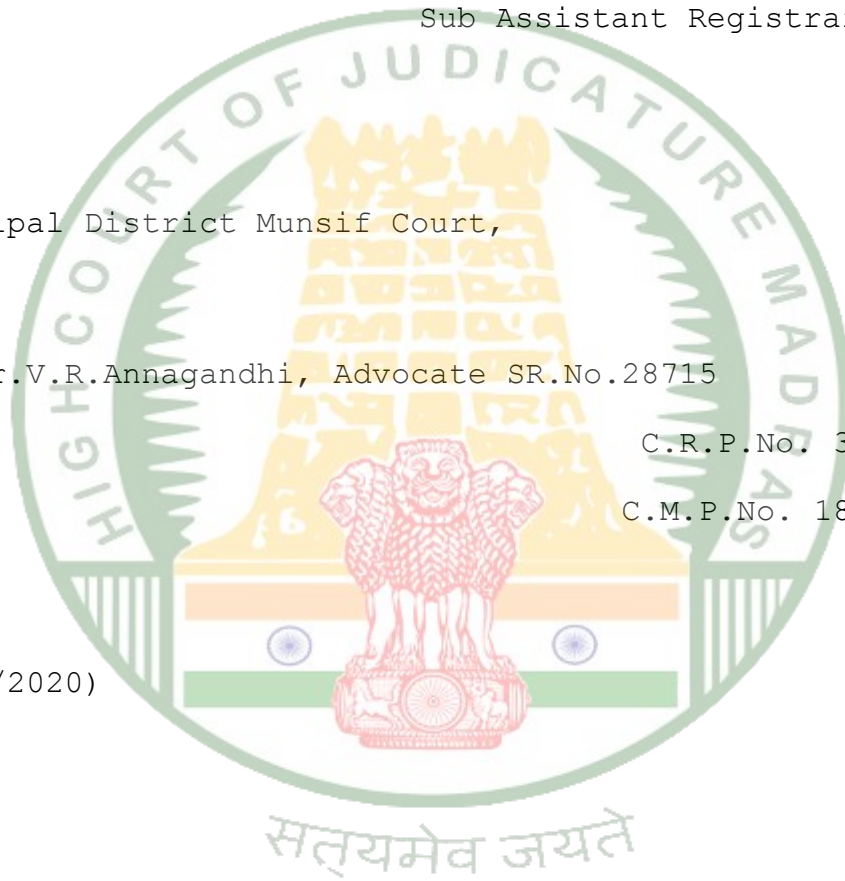
To:-

The Principal District Munsif Court,
Namakkal.

+1cc to Mr.V.R.Annagandhi, Advocate SR.No.28715

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PP (CO)
GMY (19/10/2020)



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