

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) No.4023 of 2018
and CMP No.22260 of 2018

1. Easu @ Adhikesavalu

2. Durvasalu

.. Petitioners

Vs.

D. Jayanthi

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decree made in IA No.54 of 2018 in IA. No.455 of 2015 in O.S.No.200 of 2015 on the file of the District Munsif Court, Gudiyattam, Vellore District dated 10.10.2018.

For Petitioners : Mr.K.A.Ravindran

For Respondent : Mr. G.Vinodh Kumar

ORDER

This matter is taken up for hearing through Video-Conferencing.

The defendants in OS No.200 of 2015 have come up with this Revision aggrieved by the dismissal of their application in IA No.54 of 2018 seeking to scrap the report filed by the Commissioner and to appoint a new Commissioner with a direction to him to take the assistance of a Surveyor, note down the physical features of the property and file a report.

2. The suit was laid by the plaintiff seeking a permanent injunction restraining the defendants from interfering with their possession of the suit property.

3. The suit is being resisted by the defendants contending that there runs a pathway in the suit property over which the defendants have a right.

It is only to demonstrate the existence of the said pathway, the defendants filed IA No.455 of 2015 for appointment of a Commissioner. The said IA No.455 of 2015 was allowed on 18.11.2016 and a Commissioner was

appointed. The Commissioner, according to the petitioners, exceeded the scope of the warrant measured the entire street and filed a report. Hence it has become necessary for them to scrap the Commissioner's Report and appoint another Commissioner to visit the property to measure the same with the help of the Surveyor.

4. The Trial Court dismissed the said application concluding that the second Commissioner cannot be appointed without evidence being let in on the correctness of the Report.

5. I have heard Mr. K.A.Ravindran, learned counsel appearing for the petitioners and Mr.G.Vinodh Kumar, learned counsel appearing for the respondent.

6. Mr.K.A.Ravindran, learned counsel appearing for the petitioners would contend that the object of the appointment of Commissioner is only to demonstrate the existence of the pathway as claimed by the defendants in the suit property. The Commissioner had over stepped to the warrant and

measured the entire street and has filed a report, which is no way useful to the Court to determine the real nature controversy between the parties.

7. I have considered the submissions of the learned counsel Mr.K.A.Ravindran. I am unable to countenance the said submission. The law relating to appointment of the second Commissioner is fairly well settled. A second Commissioner cannot be appointed unless the Court finds that the report of the first Commissioner is liable to be scraped on the ground that it is erroneous or that it is in excess of the warrant issued to the Commissioner. The said exercise can be done only after the evidence of the Commissioner is recorded and the trial takes place. Therefore, I do not think that the order of the Trial Court can be interfered with at this juncture.

8. The Revision therefore fails and it is dismissed. It is made clear that it will be open to the petitioners to examine the Commissioner and demonstrate how the report is flawed, apart from letting in evidence to show the existence of the pathway and establish their right to use the said path

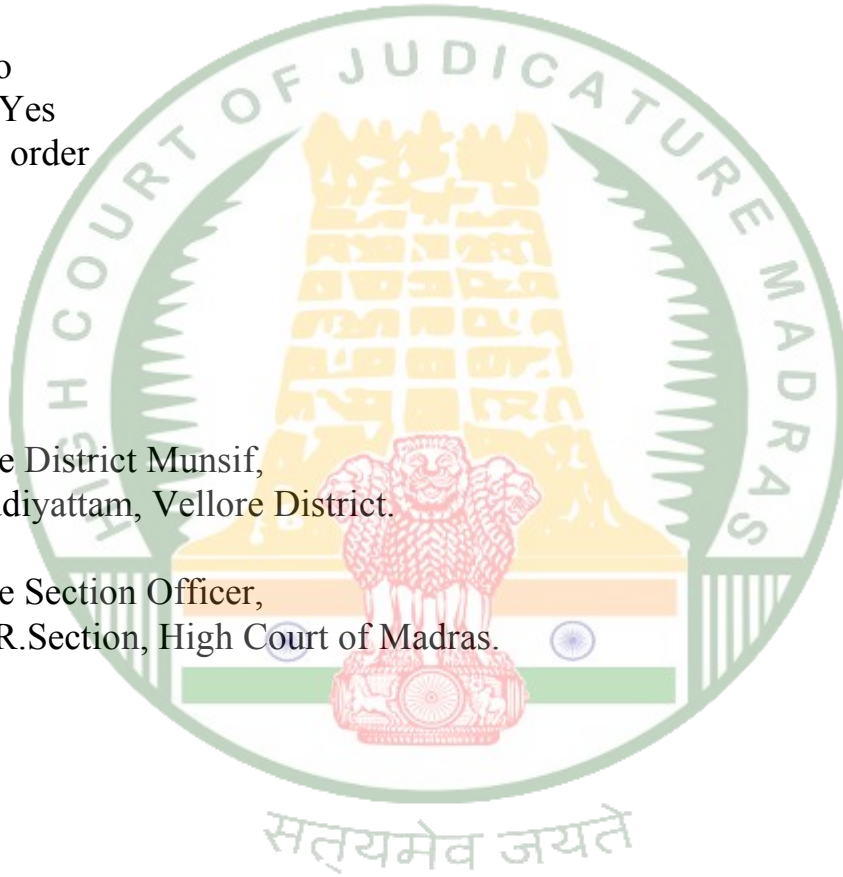
way in the suit property. No costs. Consequently, the connected miscellaneous petition is closed.

24.09.2020

jv
Index: No
Internet: Yes
Speaking order

To

1. The District Munsif,
Gudiyattam, Vellore District.
2. The Section Officer,
V.R.Section, High Court of Madras.

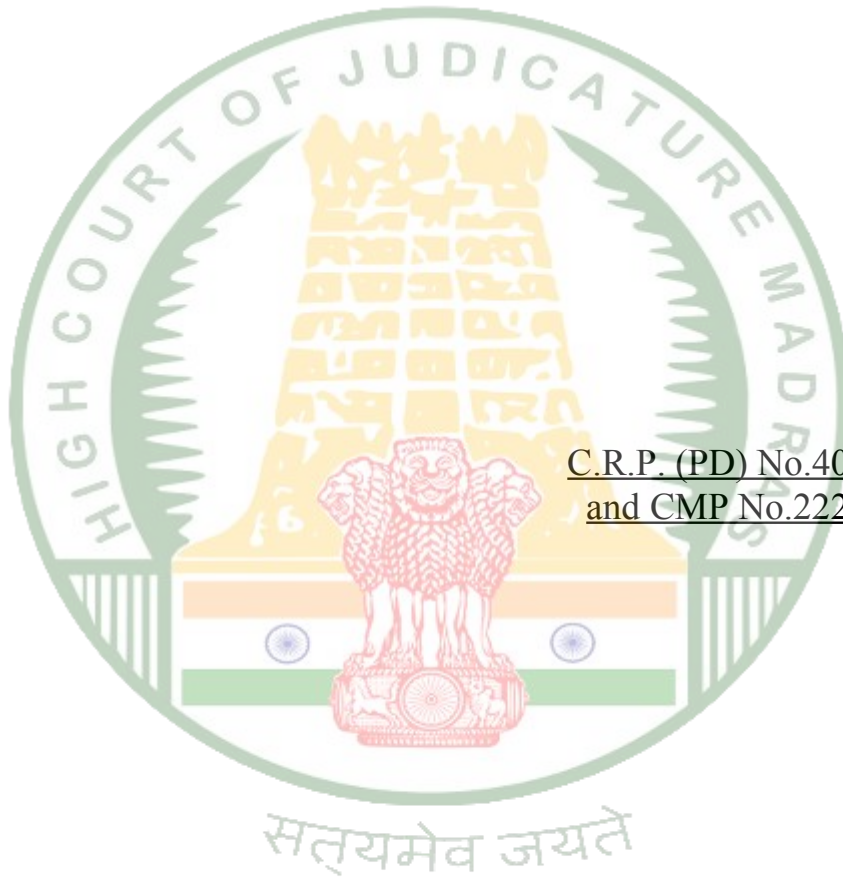


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R.SUBRAMANIAN, J.

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