

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 7.4.2021.

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P.PD No.77 of 2019

and

C.M.P.No.634 of 2019

P.Raja

Petitioner

vs.

Varadharajan

Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 2.11.2018 passed in I.A.No.193 of 2018 in I.A.No.192 of 2018 in O.S.No.186 of 2018 on the file of the District Munsif & Judicial Magistrate, Vazhapaddy.

For Petitioner : Ms.J.Prithvi

For Respondents : No appearance.

ORDER

The Civil Revision Petition is directed against the order in I.A.No.193 of 2018 in I.A.No.192 of 2018 in O.S.No.186 of 2018 dated 2.11.2018.

2. The revision petitioner is the plaintiff in O.S.No.186 of 2018 which is now pending before the District Munsif Court, Vazhapaddy .

3. The said suit has been filed seeking permanent injunction

restraining the defendants therein from interfering with possession of 17 Palmirah Trees in the suit schedule property and also not to cut those trees and not to break the boundaries with respect to the suit schedule property and also for costs.

4. On receipt of suit summons, the defendant had entered appearance and filed written statement. The plaintiff filed I.A.No.192 of 2018 for appointment of Advocate commissioner. That Application was favourably considered by the court and an Advocate Commissioner was appointed. The Advocate Commissioner also filed a Report annexing Maps 'A', 'B', 'C' and 'D'. It must be mentioned Maps 'A', 'B' and 'C' are the extracts from revenue records and Map 'D' had been prepared by the Advocate Commissioner by himself. The plaintiff had objections to the Report of the Advocate Commissioner and filed his objections. Thereafter, I.A.No.193 of 2018 had been filed by the plaintiff seeking a direction to re-issue the warrant of commission to the Advocate Commissioner directing him to file a Supplementary Report in accordance with proper Survey Number and file a further Report in the Court.

5. This was objected to by the Respondent/Defendant. Thereafter, the order now under challenge had been passed by the learned District Munsif and Judicial Magistrate at Vazhapaddy on

2.11.2018. The learned Judge relied upon the decisions in 2017-3-LW 521 (**M.Ammasayappan & others v. Muthusamy (died) and others**), 2014 (3) MWN (Civil) 53 (**Mathew Mathan Cross v. S.S.Kannan and others**), 2013(2) MWN (Civil) 619 (**V.Ganesan v. Kamal Jain and another**) for the proposition that Warrant to the Advocate Commissioner cannot be re-issued unless the Report is scrapped.

6. The learned counsel for the petitioner also relied upon on the very same Judgments.

7. This is a strange case where a Commissioner has been appointed at the instance of the present petitioner, who has discharged his warrant and thereafter, objections have been filed by the petitioner to the Report of the Advocate Commissioner and then an Application had been filed calling upon the court to re-issue the warrant to the Advocate Commissioner with a direction to file a fresh report.

8. The only manner in which the petitioner can establish his case is by relying upon the revenue records and by summoning them from the appropriate authorities. Even if the Commissioner has given a Report, it is only his opinion and not binding upon the parties. On the other hand, the revenue records would have more evidentiary

value if produced before the court in the manner known to law.

9. The grievance expressed by the learned counsel for the petitioner is that Map 'D' annexed with the Report of the Commissioner wherein palmiarah trees are also shown is only a reflection of the survey plan and therefore, it is expressed that the petitioner would suffer owing to the wrong interpretation of the Advocate Commissioner.

10. The Advocate Commissioner has filed his Report as to what he witnessed in the place where he had inspected. If the petitioner has grievance, the course open to him is to scrap or to cancel the Report of the Advocate Commissioner and thereafter, seek permission to appoint a fresh Advocate Commissioner. The objections had also been filed to the Report of the Advocate Commissioner. It may be partly correct and partly wrong. Still if the petitioner feels that the Report of the Commissioner is not proper, the petitioner can always call upon the court cancel the report of the Commissioner in entirety and seek permission to file application to appoint fresh Advocate Commissioner.

11. On the other hand, to substantiate his case, the petitioner can always summon the revenue records and prove them in the manner known to law, which would be not only relevant but also

admissible and thereafter, rely upon those revenue records to substantiate his case.

12. Insofar as re-issue of warrant to the Advocate Commissioner is concerned, the Commissioner cannot be appointed for a second time unless for cogent reasons, the earlier Report is canceled out by the court. Only thereafter, can the Commissioner once again be appointed to inspect and to file a further Report. The distinction between re-issuance of warrant for the second time and filing of application to appoint fresh Commissioner is very narrow.

13. Therefore, I find no reason to interfere with the order passed by the learned District Munsif cum Judicial Magistrate. However, liberty is given to the petitioner to file his objections to the earlier Report of the Advocate Commissioner and if advised, file application for appointment of fresh Advocate Commissioner or in the alternative to summon the relevant records from the revenue authorities and place them as additional documents to substantiate his case before the Trial Court. I am confident that the learned District Munsif would deal with such Applications purely on merits.

14. With the above observation, the Civil Revision Petition is dismissed. No order as to costs. The connected Miscellaneous Petition is also dismissed.

7.4.2021.

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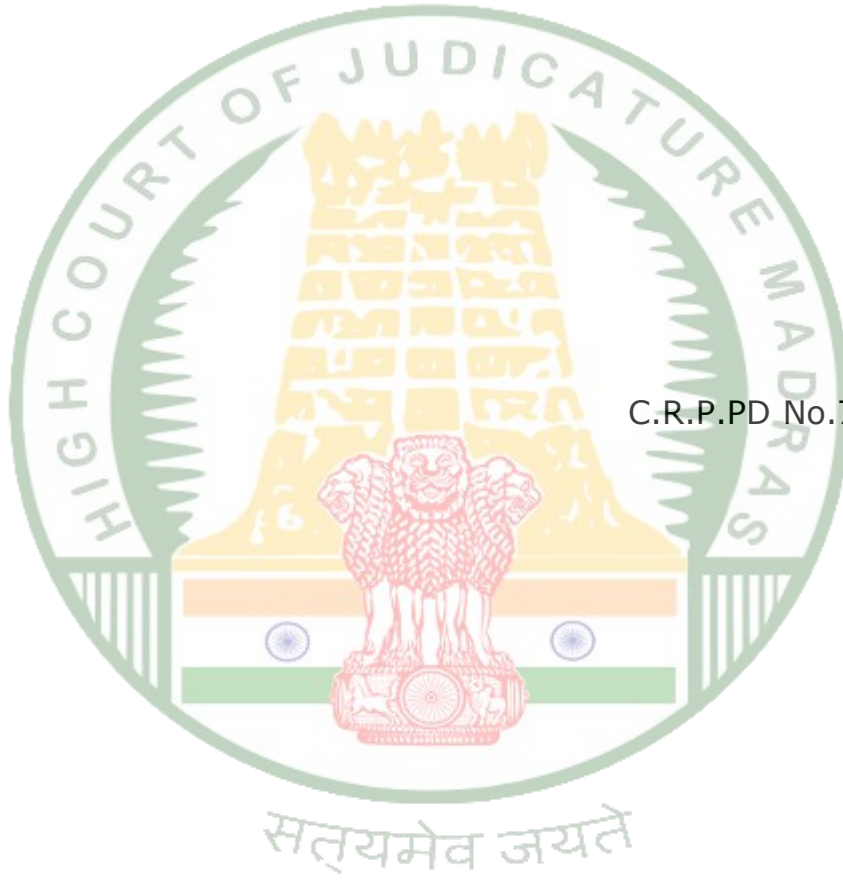
The District Munsif &
Judicial Magistrate,
Vazhapaddy.



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C.V.KARTHIKEYAN, J.

Ssk.



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