

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 26.02.2021

CORAM:

THE HONOURABLE MRS. JUSTICE **V.BHAVANI SUBBAROYAN**

C.R.P. (PD) No.372 of 2021

and

C.M.P.No.3142 of 2021

C.Duraisamy

...Petitioner

Vs

1.K.R.Jaganathan

2.R.Nandagopal

3.The Village Administrative Officer,
Neelambur Village, Sulur Taluk,
Coimbatore.

4.The Taluk Administrative Officer,
Neelambur Village, Sulur Taluk,
Coimbatore.

5.The Tahsildar,
Sulur Taluk,
Coimbatore.

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 25.11.2019 and made in I.A.No.1667 of 2018 in O.S.No.744 of 2017 on the file of the District Munsif Court, Sulur.

For Petitioner : Mr.N.Ishtiaq Ahmed

ORDER

The limited prayer sought for in the present petition is to set aside the order and decretal order dated 25.11.2019 and made in I.A.No.1667 of 2018 in O.S.No.744 of 2017 on the file of the District Munsif Court, Sulur.

2. The first respondent herein had filed the suit in O.S.No.744 of 2017 before the District Munsif Court, Coimbatore, for the following reliefs:

(i) to grant a permanent injunction restraining the first and second defendants and their agents and servants and any persons claiming through or under them, from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

(ii) to grant an another permanent injunction restraining the defendants and their agents and servants and any persons claiming through or under them, from measuring the suit property in the above said circumstances.

3. Pending the suit, the petitioner herein had filed the interlocutory application in I.A.No.1667 of 2018, before the learned Principal District

Munsif, Suler, to appoint an Advocate Commissioner with the help of the Taluk Surveyor (Firka), Suler Taluk, to note down the physical features of the property and to fix boundary as per the sale deed of my father and also the parent deed and other relevant records and to submit a detailed report for proper adjudication of the proceedings. The same was dismissed by the Court below. Hence, this present Civil Revision Petition.

4. The learned counsel for the petitioner would submit that the Court below had erred in law in dismissing the I.A.No.1667 of 2018 filed for appointment of Advocate Commissioner. Further, the trial Court failed to consider the reasons set out in the affidavit filed in support of the interlocutory application. A reading of the order of the Court below discloses that the learned Trial Judge had not applied his mind with reference to the pleadings of the parties. The Court below has passed a cryptic order without giving a valid and tangible reason for dismissing I.A.No.1667 of 2018. The reasons given by the learned Judge in support of its findings are wrong and liable to be rejected. Hence, the learned counsel for the petitioner prays to allow this petition.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. The first respondent has filed the present suit in O.S.No.744 of 2017 for the relief of Permanent Injunction to restrain this petitioner from measuring the Suit Property. In the mean while, the petitioner herein had filed I.A.No.1667 of 2018 praying for appointment of an Advocate Commissioner to measure the suit property.

7. On going through the said order passed by the Court below, it is seen that the Court has not considered the averments set out in the plaint as well as the written statement and dismissed the application filed by the petitioner for appointment of advocate commissioner, which is unsustainable. The first respondent/plaintiff has not allowed the petitioner to measure the properties and hence, the petitioner has sought permission of the trial Court to appoint an Advocate Commissioner. The Court below ought not to have dismissed the application for the simple reason that when the subject matter of the interlocutory application is yet

to be finalized, the application for appoint of Advocate Commissioner cannot be allowed. This Court is not in agreement with such a finding rendered by the Court below.

8. Hence, this Court is of the view that appointment of an Advocate Commissioner to measure the suit properties will not in any way cause prejudice to the respondent. Accordingly, this Court directs the trial Court to appoint an Advocate Commissioner to measure the physical features of the suit mentioned property, within a period of one month from the date of receipt of copy of this order and the Court below directed is also directed to pass appropriate orders.

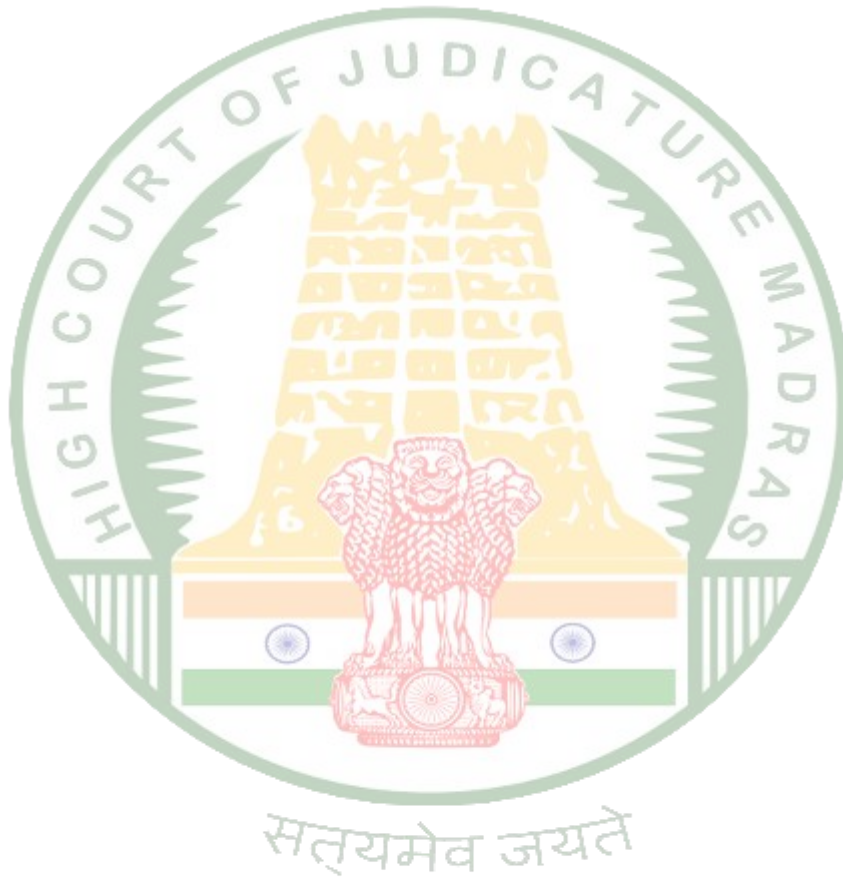
9. Accordingly, the Civil Revision Petition stands disposed of. No costs. Consequently connected Miscellaneous Petition is closed.

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Index: Yes/No
Speaking order/Non-Speaking Order
sbn

To

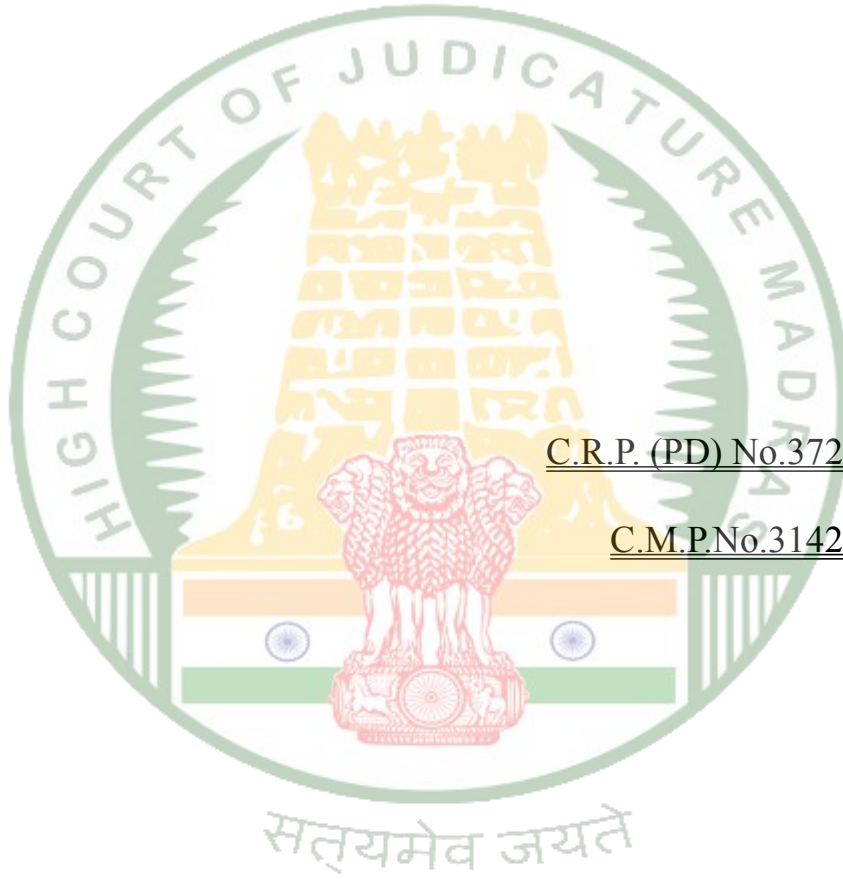
The District Munsif Court,
Sulur.



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V.BHAVANI SUBBAROYAN, J.

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