

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP (PD) No.1242 of 2018
and CMP No.6356 of 2018

1.S.Madappan
2.S.Arumugham alias Selvam
3.P.Chenrayan alias Boopathy Petitioners

Vs

1.E.Dharmalingam
2.Valarmathi
3.M.Palanichamy
4.K.Senthilnathan
5.P.Chinna Pillai
6.P.Dhanalakshmi
7.Pappa
8.S.Lakshmanann Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 06.01.2018 in I.A.No.805 of 2017 in O.S.No.766 of 2008 on the file of the II Additional District Munsif Court, Salem.

For Petitioners : Mr.K.Selvaraj

For R1 & R2 : Mr.P.Jagadeesan

ORDER

This Civil Revision Petition is directed against the fair and decreetal order dated 06.01.2018 in I.A.No.805 of 2017 in O.S.No.766 of 2008 on the file of the II Additional District Munsif Court, Salem, thereby allowing the petition for appointment of Advocate Commissioner.

2. The petitioners are the defendants and the respondents 1 and 2 are the plaintiffs. The respondents 1 and 2 filed a suit for bare injunction in respect of the suit property. Pending suit, the petitioners forcibly encroached upon the portions of the suit property and constructed asbestos roofed sheds and buildings. The respondents objected to their building encroachment and constructions, still the petitioners encroached some portions of the suit property. Therefore, the respondents 1 and 2 filed a petition to include the prayer for declaration of title and mandatory injunction for removal of the construction put by the petitioners in the suit property and the same was allowed. Accordingly, the plaint was amended by including the prayer for declaration and mandatory injunction for removal of the construction put up by the petitioners in the suit property.

3. Thereafter, the respondents 1 and 2 filed a petition for appointment of Advocate Commissioner in I.A.No.430 of 2016. However, the same was not pressed and dismissed by an order dated 09.02.2017. Again the respondents 1 and 2 filed a petition for appointment of Advocate Commissioner to inspect the suit property and note down the physical features of the same in I.A.No.706 of 2017. It was partly contested by the petitioners and the same was dismissed on 02.11.2017. Within a period of six days, the respondents 1 and 2 filed another application for appointment of Advocate Commissioner for the very same property.

4. A perusal of the affidavit filed in support of the petition for appointment of Advocate Commissioner reveals that the Commissioner's report is very much useful to the court to clinch the issues involved in the suit. The dismissal of the earlier applications for appointment of Advocate Commissioner will not in any way affect the present application. The petitioners were continuing their illegal construction and they are gathering building materials to make the temporary sheds into permanent structures.

5. A perusal of the amended plaint reveals that in the description of property for the relief of declaration and mandatory injunction, they categorically described the property, which was encroached by the petitioners herein. That apart, the respondents 1 and 2 also filed a suit in O.S.No.596 of 2008 as against the petitioners and their forefathers claiming title for the same property and the same was dismissed. The 1st respondent and his father filed another suit in O.S. No.195 of 2013 for declaration and injunction in respect of the very same property. The said suit was also dismissed for default. Thereafter, the present suit was filed for the very same property that too for bare injunction. While pending suit, amended the relief for declaration and mandatory injunction.

6. Without considering the above, the Court below mechanically allowed the application for appointment of Advocate Commissioner that too for measuring the suit property and note down the physical features of the same and to note down the encroachment made by the petitioners herein. As stated supra, in the amendment petition, they categorically stated that the portions which was encroached by the respondents and as such no need to again appoint the Advocate Commissioner to inspect the

said suit property and note down the encroachment made by the petitioners herein.

7. There is absolutely no change of circumstances for filing repeated petition for appointment of Advocate Commissioner. The previous application in I.A.No.706 of 2017 was dismissed only on 02.11.2017. Without even challenging the said order passed by the Court below, immediately the present application has been filed by the respondents 1 and 2 for the very same relief. Therefore, the order passed by the Court below is perverse and illegal.

8. Accordingly, the impugned order dated 06.01.2018 made in I.A.No.805 of 2017 in O.S.No.766 of 2008 on the file of the II Additional District Munsif Court, Salem, is hereby set aside and the Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

16.04.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

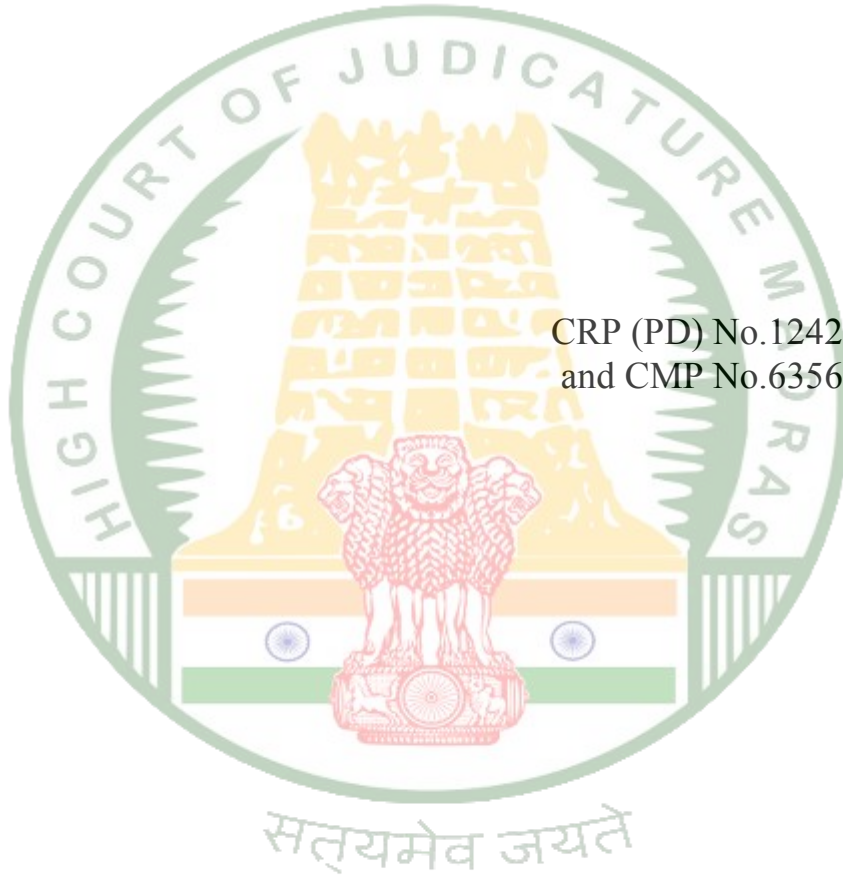
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G.K.ILANTHIRAIYAN, J.

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To

The II Additional District Munsif Court,
Salem.



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