

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2021

CORAM

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

CRP.PD.No.1262 of 2018
and CMP.No.6494 of 2018

Devaraj

..Petitioner

Vs.

1.Kuppammal
2.Radha
3.Palani
4.Murugan
Kannan(died)
5.Viruthambal
6.Gopal
7.Rajiammal
8.Subha
9.Selvi
10.Meenakshi Ammal
11.Manikandan

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair order and decretal order dated 13.04.2017 passed by Principal District Munsif Court, Tirukoilur in IA.No.4 of 2017 in OS.No.301 of 2010.

For Petitioner : Mr.T.K.Saravanan

For Respondents
For R1 & 2 : Mr.D.Baskar
for Mr.K.R.Swaminathan

ORDER

This civil revision petition is filed against the fair order and decretal order dated 13.04.2017 passed by Principal District Munsif Court, Tirukoilur in IA.No.4 of 2017 in OS.No.301 of 2010, thereby dismissing the petition seeking for appointment of advocate commissioner.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed suit for declaration and injunction in respect of suit A & B schedule property. The respondents filed their written statement and specifically averred that in respect of the B schedule property, it is situated in survey No.259/5 and is already in possession and enjoyment of the defendants. In fact, they were also granted patta and they have constructed terraced house with compound wall.

3. On perusal of the plaint revealed that in respect of A schedule property is a patta land, in respect of B schedule property it is situated adjacent to A schedule property, in which the petitioner

occupied in the year 1990 and he spent Rs.5,000/- for levelling the suit property. While being so, on 01.05.2010, the respondents 1 and 2 herein attempted to put up wall in the B schedule property. At that juncture, the petitioner filed petition for appointment of advocate commissioner to note down the physical features of the suit schedule property with the help of Village Administrative Officer and Surveyor to measure the same.

4. When the respondents specifically averred in their written statement that B schedule property is in their possession and enjoyment and they constructed terraced house with compound wall, the petitioner ought to have filed necessary petition for amendment to include the other relevant prayers. Instead of that, the petitioner filed petition for appointment of advocate commissioner, that too only to note down the physical features and to survey the land. If there is any dispute over the boundary, the petitioner is being the plaintiff he has to first measure the property and fix the boundary line and thereafter he ought to have filed the suit. He cannot be permitted to find out the original boundary of the suit property by appointment of advocate commissioner. Therefore, the court below rightly dismissed the petition and this Court finds no irregularity or infirmity in the order passed by the court below.

5. Accordingly, this civil revision petition is dismissed.

Consequently, connected miscellaneous petition is closed. No order as to costs.

17.04.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

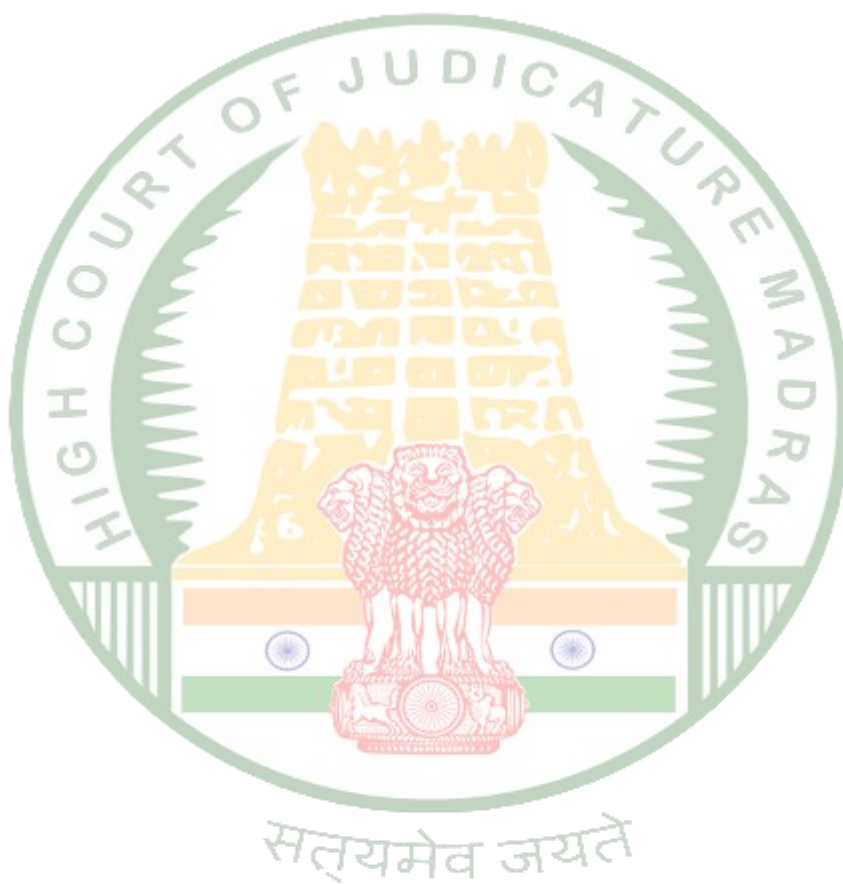
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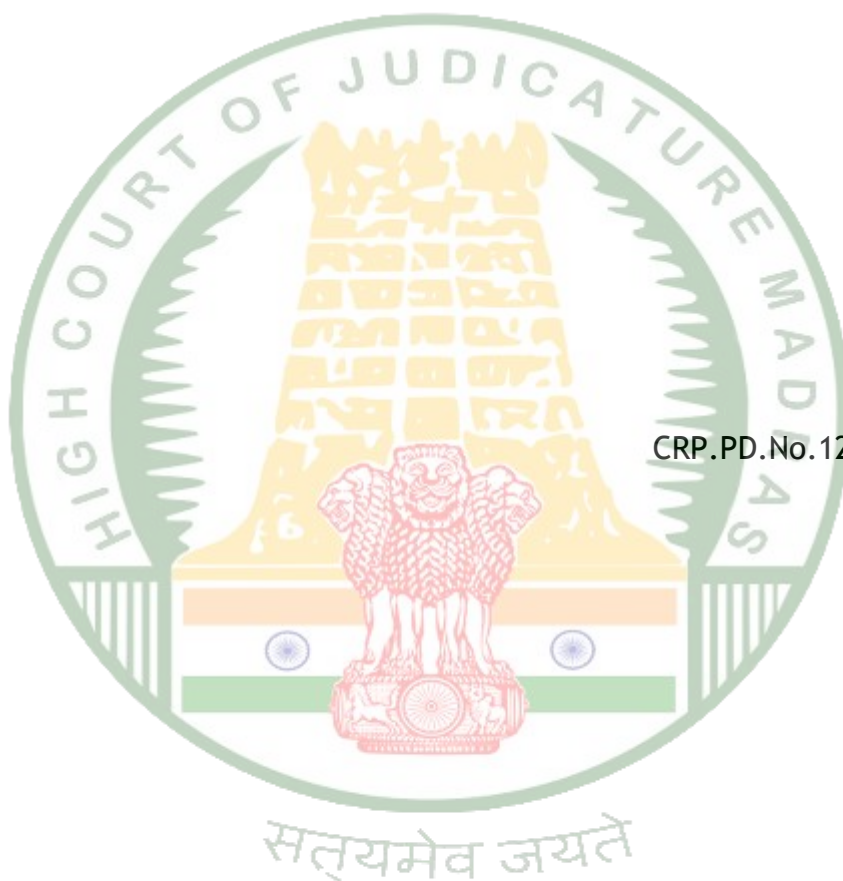
The Principal District Munsif Court,
Tirukoilur



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G.K.ILANTHIRAIYAN,J.

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