

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(PD) No.961 of 2019
and C.M.P.No.6342 of 2019**

Hariprashad

...Petitioner

Vs.

- 1.S.Saraswathi
2. D.Vijaya
3. Shanthi
4. Ponnusamy
5. T.Vijaya
- 6.Chitharajan
7. The City Municipal Corporation
Rep. by its Commissioner
Erode Corporation
Region-3, Teachers Colony
Erode-11.
8. The Assistant Commissioner of Corporation
The City Municipal Corporation
Rep. by its Commissioner
Erode Corporation
Region-3, Teachers Colony
Erode-11.

...Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order dated 07.12.2018 in I.A.No.458 of 2018 in O.S.No. 252 of 2018 on the file of I Additional District Munsif Court, Erode and allow the Civil Revision Petition

For Petitioner : Mr.S.Kaithamalai Kumaran
For Respondents : Mr. K.Govi Ganesan
for R1 to R6
: R7 & R8 - No appearance

ORDER

This Civil Revision Petition is filed, against the fair and final order dated 07.12.2018 in I.A.No.458 of 2018 in O.S.No.252 of 2018 on the file of the I Additional Munsif Court, Erode.

2.A Suit in O.S.No.252 of 2018 has been filed by the respondents 1 to 6 as against the respondents 7 and 8, for the relief of permanent injunction.

3.Pending suit, the petitioner herein filed an Interlocutory Application in I.A.No.458 of 2018 under Order 1 Rule 10 (2) and under Section 151 of CPC., to implead him as defendant in the suit.

4.The case of the petitioner is that he is the owner of the property in old S.F.No.57 in R.S.No.108/4 in Surampatti Village, Erode Taluk, by virtue of a Gift settlement deed dated 12.07.2007, executed by his father. There was an East-West 30 feet road on the West side of his property and the said pathway is being enjoyed by the petitioner and his predecessors and

even separate gate way was provided by him, facing towards the west in the said 30 feet East-West Road. The respondents are giving trouble to the petitioner, to reach his property through the said road. Further, the said 30 feet road was originally formed by the erstwhile owners, who formed the layout. The respondents have only right of use of the 30 feet road and they have no absolute right over it. In order to prevent the petitioner from enjoying the 30 feet road, illegally, they put up a compound wall along with the pathway. Therefore, the petitioner lodged a complaint before the respondents 7 and 8. The alleged compound wall was put up on 27.04.2018 and a Vinayagar Statue was put up in front of the said wall. This is illegal and the Corporation authorities being the owner of the 30 feet road, must remove the construction. However, the respondents 1 to 6 filed a suit in O.S.No.252 of 2018, but deliberately not impleaded the petitioner as an interested party to the suit. Therefore, according to the petitioner he is the proper and necessary party to the said suit and he must be impleaded as a defendant.

5.This petition was resisted by the respondents 1 to 6 claiming that the petitioner's property is having South facing entry and he can reach

his site through the South side. There was a thar road from East, and the said thar road turns towards North and enters the property of the petitioner. He never reached his property from East to West. His property is situated at 8 to 10 feet lower level comparatively to others. Further, the compound wall was put up on the Eastern side. It is not correct to say that the respondents put up compound wall illegally, abutting his pathway. The petitioner is rich and powerful man and have political influence also. By using his political power, he pressurized the respondents 7 and 8 to issue notice to demolish the compound wall. Therefore, the respondents 1 to 6 filed a suit in O.S.No.252 of 2018 as against the respondents 7 and 8.

6.The learned trial Judge on considering the submissions made and materials produced found that this suit being filed for permanent injunction, petitioner is not a proper and necessary party and in this view of the matter, dismissed the petition. As against the order, the present Civil Revision Petition is filed.

7.Reading of the plaint shows that the suit was filed by the respondents 1 to 6 as against the respondents 7 and 8 claiming the relief of permanent injunction, restraining the defendants their men, employees etc.,

from removing or demolishing or in any manner causing damage to the compound wall constructed on the eastern end of the suit property.

8.The allegations made in the plaint shows that the western portion of the corresponding old S.F.No.57 to R.S.No.108/1, was originally belong to Subramaniagounder and others. It was divided into 22 house sites by forming roads and the said sites were also sold to various persons with a right to use the roads formed by the original landowners. Subsequently, the roads were gifted to the Surampatti Panchayat by its original owners. Therefore, the petitioner cannot make a claim in respect of this road. The respondents 1 to 6 and others constructed houses and living there peacefully. Further, the compound wall was not constructed in any portion of the road, which is gifted to the Panchayat Board. However, the respondents 7 and 8 at the instigation of the petitioner, issued notice dated 04.05.2018, making unlawful and illegal demand. If really the respondents 1 to 6 put up any compound wall in the road belong to the respondents 7 & 8, it is for them to remove the said road, by following the due process of law.

9.In the facts and circumstances of this case, the relief claimed by the petitioner that he is necessary party to the suit cannot be considered.

Further, there is no specific relief prayed against the petitioner in the suit. To implead the petitioner as a defendant, he has to establish 'whether he had any vested interest on the suit property'. The learned counsel for the petitioner submitted that the petitioner would be in a position to assist the Corporation authorities to decide the issues. That cannot be the reason for impleading the petitioner as a party to the suit, when he has no connection whatsoever with regard to the suit property. In this view of the matter, this Court finds that the dismissal of the petition in I.A.No.458 of 2018 on the ground that the petitioner is not a proper and necessary party to the suit, is correct and this Court finds no reason to interfere with the finding of the learned trial Judge.

10. In the result, the order dated 07.12.2018 in I.A.No.458 of 2018 in O.S.No.252 of 2018 on the file of the I Additional Munsif Court, Erode is hereby confirmed and the Civil Revision Petition is dismissed. However, considering the fact that the scope of the suit is very limited and the suit is pending from the year 2018, the learned I Additional Munsif, Erode, is directed to dispose of the suit in O.S.No.252 of 2018 as expeditiously as possible, preferably, within a period of three months from the date of receipt

of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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10.08.2021

Index:Yes/No

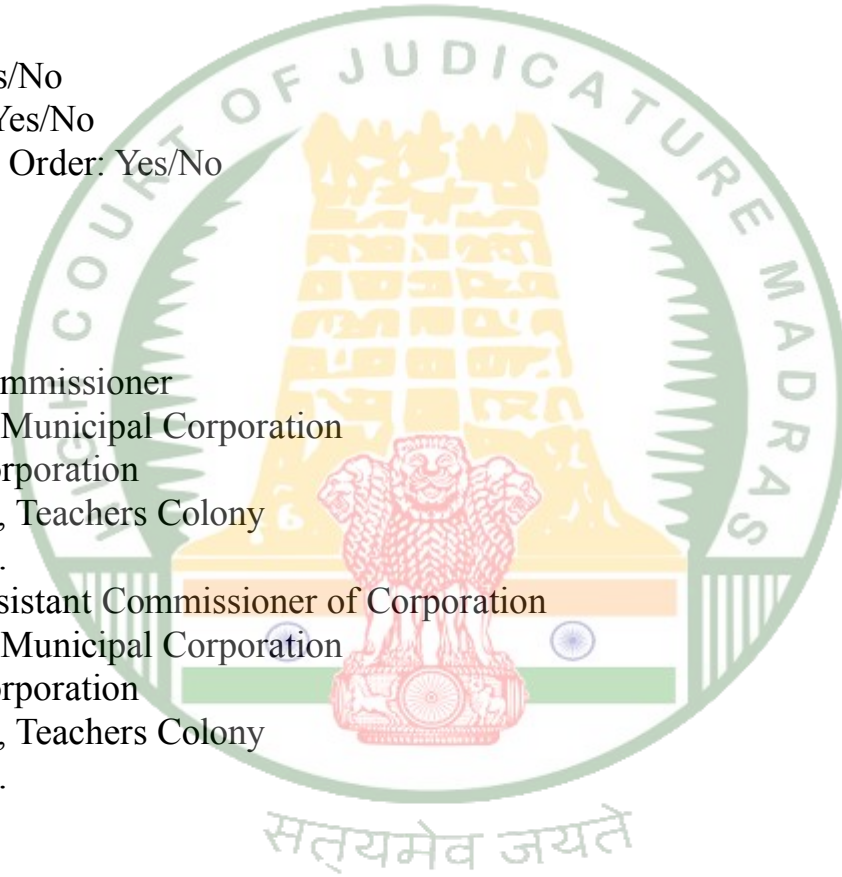
Internet:Yes/No

Speaking Order: Yes/No

To

1.The Commissioner
The City Municipal Corporation
Erode Corporation
Region-3, Teachers Colony
Erode-11.

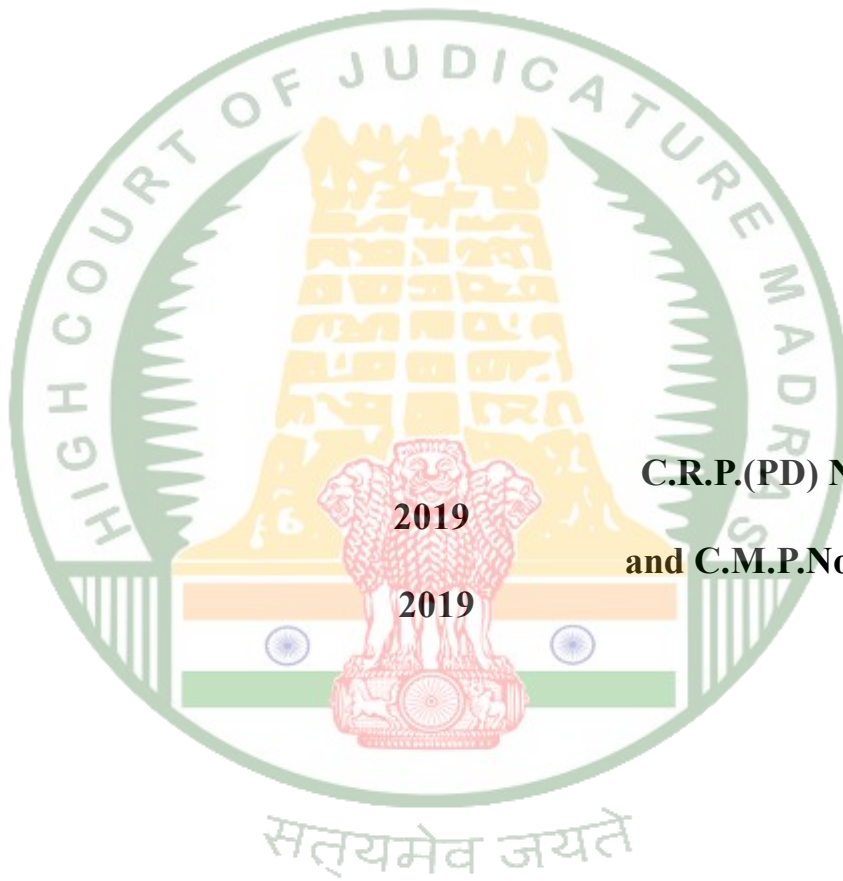
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G.CHANDRASEKHARAN.J,

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