

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2021

CORAM

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

CRP.PD.No.1272 of 2016

and

CMP.No.7062 of 2016

1. Anbazhagan
2. Chandiravathi
3. Pichamani @ Dharmalingam
4. Loganathan

... Petitioners

Vs.

1. Velmurugan
2. Arulprakasam
3. Indhira
4. Arul Jothi

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to ~~set aside~~ the order made in I.A.No.862 of 2015 in O.S.No.73 of 2014 on the file of the District Munsif Court, Panruti dated 30.11.2015 by considering the nature and issues involved in the matter and allow the Civil Revision petition.

For Petitioners : Mr.S.P.Mano Bharath for
: Mr.K.Moorthy

For Respondents : Mr.R.Sunil Kumar (for R1 to R4)

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.862 of 2015 in O.S.No.73 of 2014 dated 30.11.2015 on the file of the learned District Munsif, Panruti, thereby, dismissing the petition for re-issuance of warrant of Advocate Commissioner to inspect the suit properties with the help of videographer and qualified surveyor to note down the physical features of the suit 'C' schedule property.

2. The petitioners are the defendants and the respondents are the plaintiffs. The respondents filed the suit for declaration to declare that the rights of common pathway of the plaintiffs to use the suit 'C' schedule pathway and also permanent injunction restraining the petitioners by preventing them to interfere in any manner with the enjoyment of absolute rights of the respondents in the suit 'C' schedule common pathway. While pending the suit, the respondents filed a petition for appointment of Advocate Commissioner. The same was allowed and the Advocate Commissioner was appointed to inspect the common cart pathway 'C' schedule property with the help of qualified Surveyor and to file his report with the topography and a plan. Accordingly, the Advocate Commissioner

inspected the suit 'C' schedule property with the help of Surveyor and filed his report. On receipt of the same, the petitioners filed their objections. Thereafter, they also filed a petition to scrap the Advocate Commissioner's report in I.A.No.987 of 2014 on 08.09.2014. The same was dismissed by the fair and decretal order dated 30.04.2015. The petitioners did not file any revision as against the fair and decretal order passed in I.A.No.987 of 2014. Thereafter, the petitioners filed the present petition for re-issuance of warrant and to re-visit the suit property with the help of videographer to videograph the inspection and note down the physical features of the suit 'C' schedule property. Admittedly, the petitioners did not choose to challenge the order passed in I.A.No.987 of 2014 sought for scraping the earlier Advocate Commissioner's report. The present petition has been filed to re-issue of warrant for the Advocate Commissioner.

3. On a perusal of the Advocate Commissioner's report, he inspected the entire suit property including A and B schedule properties and filed his report, whereas, on a perusal of the warrant issued to the Advocate Commissioner, it is seen that he was directed to inspect the suit 'C' schedule property (Cart Pathway) and to survey the same with the help of the

surveyor and file a report along with topography and a plan.

4. The learned counsel for the petitioners contended that there was no warrant for the Advocate Commissioner to inspect A and B schedule properties.

5. Considering the above, the report in respect of A and B schedule properties of the Advocate Commissioner is hereby scrapped. Insofar as the report with regard to the suit 'C' schedule property, the same can be considered by the trial Court, at the time of trial. Therefore, without scraping the entire Advocate Commissioner's report, another Advocate Commissioner cannot be appointed and as such, this Court finds no infirmity or irregularity in the order passed by the Court below.

6. With the above observations, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

No costs.

18.03.2021

Speaking/Non-speaking order

Index : Yes/No

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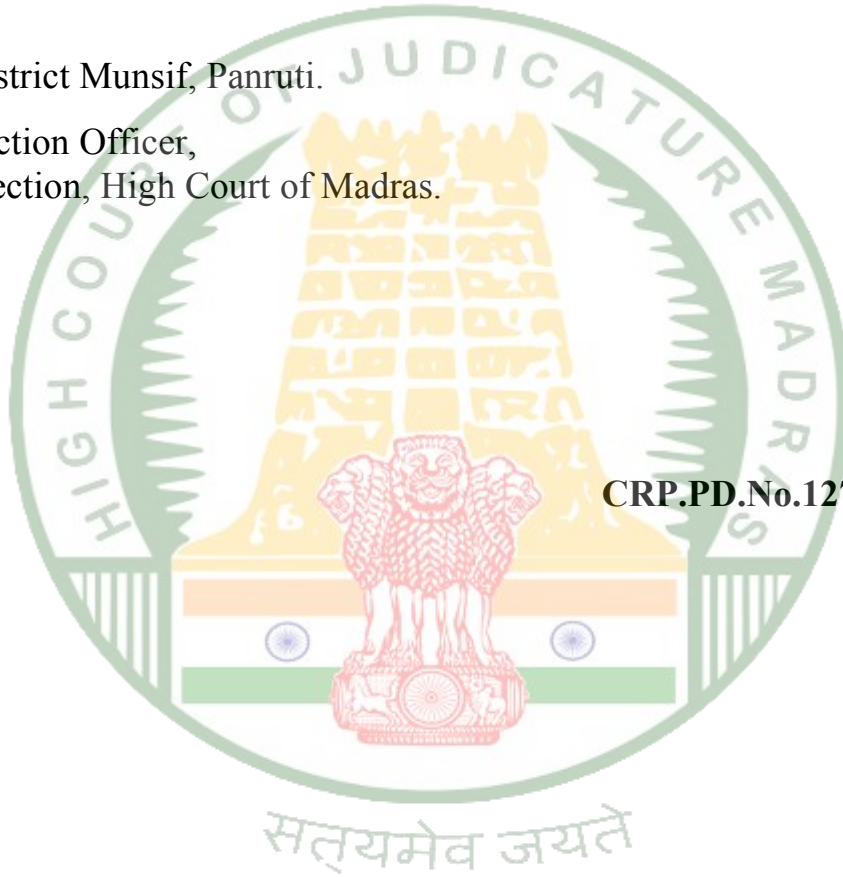
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G.K.ILANTHIRAIYAN,J.

Kv

To

1. The District Munsif, Panruti.
2. The Section Officer,
V.R.Section, High Court of Madras.



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