

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2021

CORAM

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

C.R.P.(PD) No.2068 of 2016
and C.M.P.No.10757 of 2016

S.Nithyanandhan Petitioner

Vs.

1. K.C.Subramaniyam
2. Suganteeswari
3. P.Sembanan
4. S.Saraswathi

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 20.07.2015 in I.A.No.805 of 2015 in O.S.No.191 of 2009 on the file of the District Munsif Court, Gobichettipalayam.

For Petitioner : Mr.P.Valliappan

For Respondents

For R1 & R2 : No appearance

For R3 & R4 : Mr.A.V.Arun

ORDER

This Civil Revision Petition is directed as against the fair and decreetal order 20.07.2015 passed by the learned District Munsif, Gobichettipalayam, in I.A.No.805 of 2015 in O.S.No.191 of 2009, thereby dismissing the application filed by the petitioner for appointment of advocate commissioner.

2. The petitioner is the plaintiff and the respondents are the defendants. The plaintiff filed the suit for declaration and injunction. In the said suit, the petitioner obtained order of injunction as against the respondents herein. While pending the suit on 10.07.2015, the third and fourth respondents herein trespassed into the suit property and caused damage to 37 coconut trees and banana trees and 20 teak trees by cutting out the said trees. They also damaged the land and disturbed the possession and enjoyment of the suit property by the petitioner herein. Therefore, the petitioner filed petition to punish the respondents and also filed another petition for seeking appointment of Advocate Commissioner to find out the damages caused by the respondents herein and also to note down the

physical features of the suit property. The trial Court dismissed the petition on the ground that, when the suit is posted for cross-examination of P.W.2, this petition has been filed for appointment of advocate commissioner. Further concluded that when the interim order of status quo is very much in force, the appointment of Advocate Commissioner is not necessary.

3. The learned counsel appearing for the petitioner would submit that when the interim order of status quo is very much in force, the third and fourth respondents herein along with their henchmen trespassed into the suit property and caused damage by cutting out the trees. Immediately the petitioner lodged complaint before the Inspector of Police, Gopichetti-palayam. Unfortunately, the police did not register the FIR on the complainant lodged by the petitioner. Therefore, the petitioner filed petition to punish the third respondent for violating the order of status quo and the same is pending in I.A.No.889 of 2015 before the trial Court.

4. He further submitted that to prove the damage caused by the respondents, the petitioner also filed petition for seeking appointment of

Advocate Commissioner to note down the damages caused to the suit property and also note down the physical features of the suit property. He further submitted that unless the Advocate Commissioner is appointed, the petitioner is not in a position to prove the damage caused by the respondents and also violating the interim order granted by the trial Court.

5. Per contra, the learned counsel appearing for the respondents would submit that the trial Court is granted interim order to maintain status quo by both the parties. The respondents 3 & 4 are very much in possession and enjoyment of the suit property. While being so, when the order of status quo is in force, the petitioner and his henchmen trespassed into the suit property and caused damage for the suit property and also threatened the respondent with dire consequences. Therefore, the third respondent lodged complaint and the same was registered in Crime No. 582 of 2015 for the offences under Sections 427, 447, 294(b), 323 and 506(i) of IPC on the file of the Inspector of Police, Gobichettipalayam.

6. He further submitted that the Inspector of Police, Gobichettipalayam, completed the investigation and filed final report and the same has been taken cognizance in C.C.No.145 of 2016 on the file of the learned Judicial Magistrate No.I, Gopichettipalayam. He further submitted that only to strengthen the petition to punish the respondents, the petitioner seeking appointment of Advocate Commissioner and it is nothing but collection of evidence and therefore he prayed for dismissal of this petition.

7. Heard Mr. P.Valliappan, learned counsel appearing for the petitioner and Mr.A.V.Arun, learned counsel appearing for the respondents 3 & 4.

8. The petitioner is the plaintiff. He filed the suit for declaration and permanent injunction in respect of the suit property as against the respondents. The trial is commenced and the petitioner was examined P.W.1 and P.W.2 on his side. When the case was posted for cross examination of P.W.2, the petitioner filed this petition for seeking appointment of Advocate

Commissioner and also filed another petition to punish the respondents for violating the interim order rendered by trial Court.

9. Initially, the trial Court granted interim order of status quo to be maintained by both the parties. According to the respondents on 11.07.2015, the petitioner and his henchmen trespassed into the suit property and caused damages to the suit property and also disturbed the possession and enjoyment of the suit property by the third respondent. Therefore, the third respondent lodged complaint and the same was registered in Crime No.582 of 2015 for the offences under Sections 427, 447, 294(b), 323 and 506(i) of IPC on the file of the Inspector of Police, Gobichettipalayam. After completion of investigation, the Inspector of Police filed charge sheet and the same has been taken cognizance in C.C.No.145 of 2016 by the learned Judicial Magistrate No.I, Gobichettipalayam and it is pending for trial.

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10. On the other hand, the petitioner also lodged complaint alleging that the respondents 3 & 4 along with their henchmen trespassed

into the suit property and caused damages to the trees. However, the complaint lodged by the petitioner was not registered by the concerned Police station. Hence, the petitioner approached this Court and filed direction petition in CrI.O.P.No.17551 of 2015 to direct the police to register the petitioner's complaint and the same was also dismissed by an order dated 15.07.2015, for the reason that all the allegations are civil in nature.

11. It is also seen that the alleged occurrence took place in the year 2015. The petitioner sought for appointment of Advocate Commissioner for the purpose to note down the damage caused to the trees and the land. After the period of five years, it cannot be possible to assess the damages caused to the trees as well as the land and the purpose would not be served. That apart on the complaint lodged by the third respondent, a case has been registered and now the trial is pending as against the petitioner and others. Under these circumstances, the appointment of advocate commissioner would not serve any purpose.

12. In view of the above discussion, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous is closed.

19.01.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

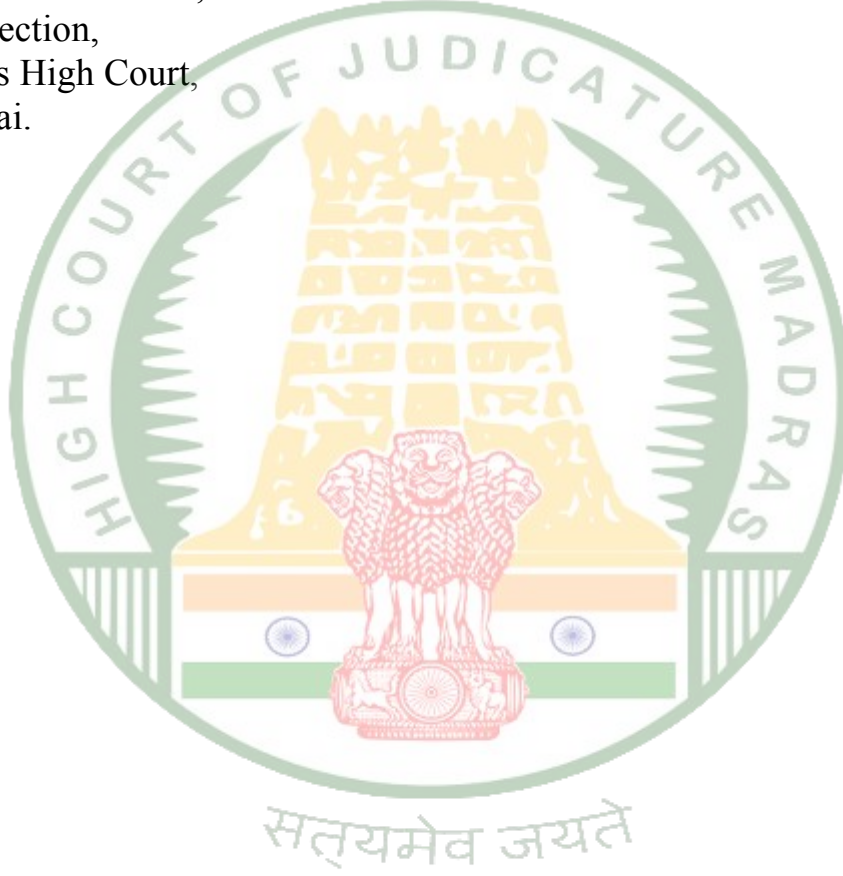
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To

1. The District Munsif,
Gobichettipalayam.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

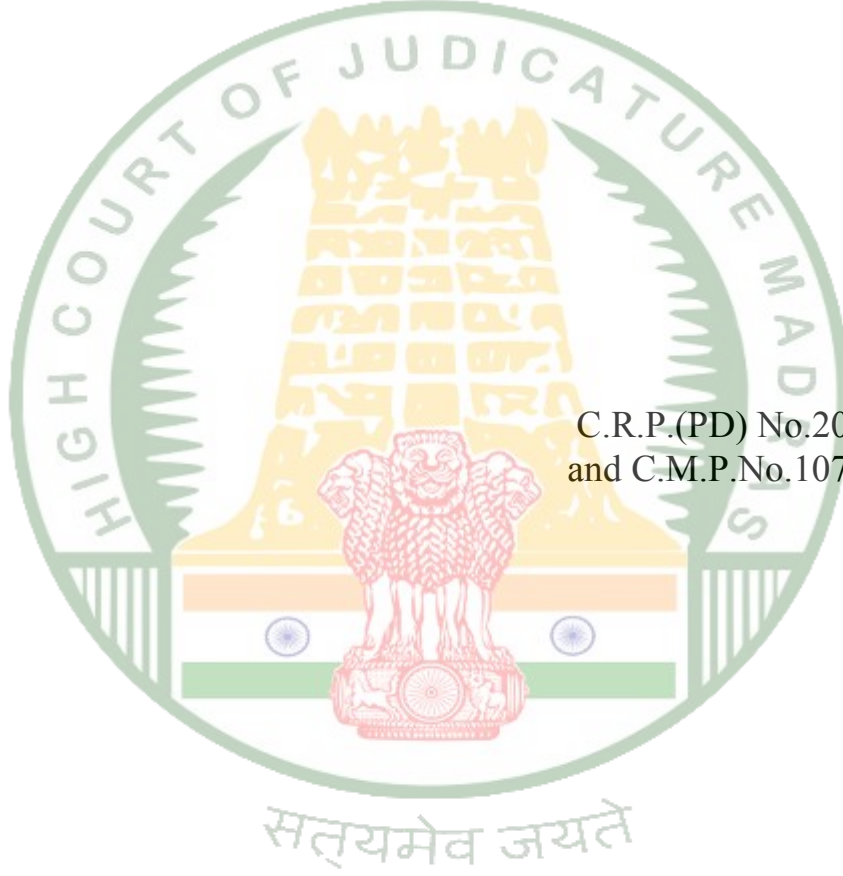


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