

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

CORAM

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

C.R.P.(PD) No.2192 of 2016
and C.M.P.No.11408 of 2016

Palanisamy Gounder
S/o.Late Visvanatha Gounder

... Petitioner

Vs.

V.Velusamy
S/o.Late Visvanatha Gounder

... Respondent

Prayer:-

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the the order and decretal order dated 02.04.2016 made in I.A.No.128 of 2016 in O.S.No.102 of 2013 on the file of the Second Additional District Munsif Court, Erode by allowing this Civil Revision Petition.

For Petitioner : Mr.N.Manokaran
For Respondent : Mr.M.Guruprasad

ORDER

This Civil Revision Petition is directed as against the fair and decretal order dated 02.04.2016 made in I.A.No.128 of 2016 in O.S.No.102 of 2013 on the file of the Second Additional District Munsif Court, Erode, thereby, dismissing the petition to scrap the Commissioner's report and plan.

2. The petitioner is the first defendant in the suit filed by the respondent herein for declaration and mandatory injunction to remove the encroachments made by the petitioner in B-schedule property and also for recovery of possession.

3. While pending the suit, the respondent filed an application for appointment of advocate commissioner and the same was allowed and the Advocate Commissioner inspected the suit property with the help of Surveyor and Village Administrative Officer. Thereafter, they measured the property as directed by the trial Court and note down the physical features and encroached portions in the plan annexed with the report.

4. The learned counsel for petitioner would submit that the Advocate Commissioner was directed only to inspect the suit property and note down its physical features instead the Advocate Commissioner noted the encroached portions in read ink and it would amount to granting of a decree in the main suit itself.

5. Though the petitioner filed their objections to the report of the Advocate Commissioner, it can be scrapped and requested for re-issuance of warrant to the Advocate Commissioner to reinspect the suit property.

6. On a perusal of the report of the Advocate Commissioner, it is categorically stated that he was appointed to note down the physical features of the suit property as directed by the trial Court. The Taluk Surveyor and the Village Administrative Officer surveyed the property and they noted down the encroached property and the same was submitted before the Court below. The petitioner also filed their objections and thereafter, the petitioner filed the petition to scrap the report of the Advocate Commissioner. As directed by the trial Court, the learned Advocate

Commissioner inspected the suit property and surveyed the same with the help of the Surveyor and the Village Administrative Officer and filed their report. Therefore, the Court below has rightly dismissed the petition. Hence, this Court finds no illegality or infirmity in the order passed by the Court below. However, the trial Court is directed to consider the objections raised by the petitioner while disposing the suit.

7. Accordingly, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

03.03.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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To

1. II Additional District Munsif Court,
Erode.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

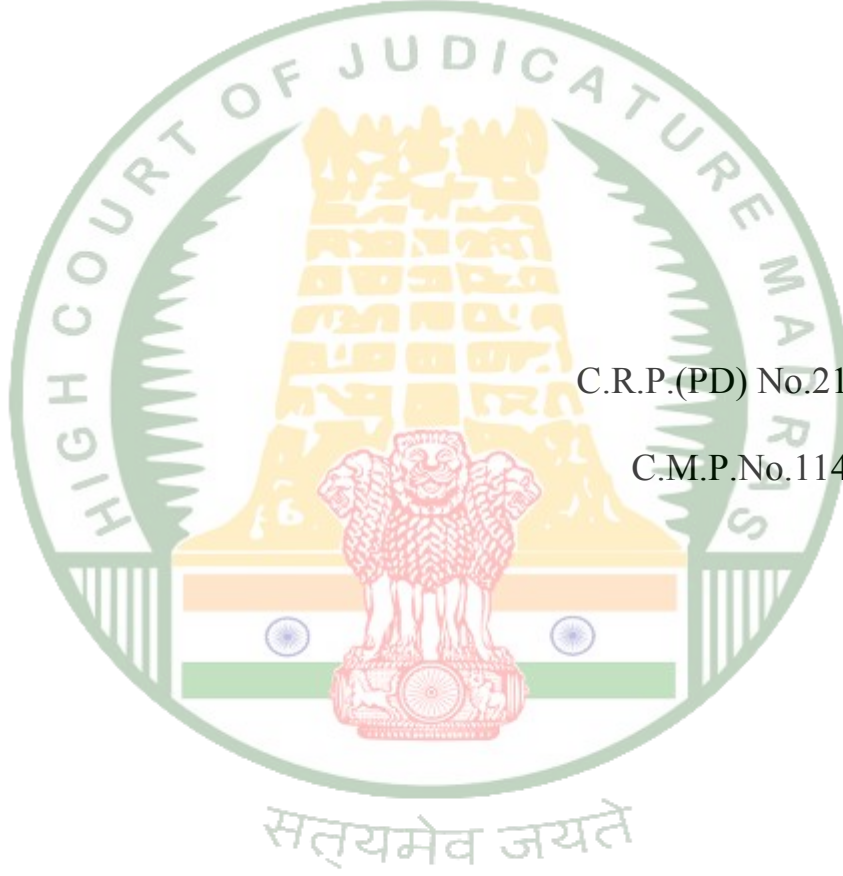


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G.K.ILANTHIRAIYAN, J.

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