

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2021

CORAM

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

C.R.P.(PD) No.2485 of 2016
and C.M.P.No.12850 of 2016

1. Ramu
2. Ravi
3. Raja

... Petitioners

Vs.

Balaraman

... Respondent

Prayer :- Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the order dated 25.02.2016 passed in I.A.No.1393 of 2015 in O.S.No.305 of 2014 on the file of the District Munsif Court at Poonamallee.

For Petitioners : Mr.R.Krishnaswamy

For Respondent : Mr.M.V.Seshachari

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This Civil Revision Petition has been filed as against the fair and decreetal order dated 25.02.2016 passed by the learned District Munsif

at Poonamallee in I.A.No.1393 of 2015 in O.S.No.305 of 2014, thereby dismissing the petition for appointment of advocate Commissioner.

2. The petitioners are the plaintiffs and the respondent is the defendant in the suit filed by the petitioners in O.S.No.305 of 2014 for declaration declaring that the judgment and decree passed in O.S.No.813 of 2004 on the file of the District Munsif Court, Poonamallee is not binding on the plaintiffs and permanent injunction in respect of the other suit schedule properties ABC. While pending the suit, the petitioners filed petition for appointment of Advocate Commissioner to inspect the suit properties with the assistance of Taluk Surveyor and the records maintained by the Special Tahsildhar Gramanatham and to measure the same.

3. The respondent filed counter and raised objection that entire suit properties have already been decreed in O.S.No.813 of 2004 filed between the petitioners' father and the respondent for partition. The present suit itself nothing but re-agitation for the very same properties which were already dealt with in O.S.No.813 of 2004. It is further averred that the

present application for appointment of Advocate Commissioner has been filed to gather evidence without the prayer of injunction. The petitioners filed suit for declaration declaring that the judgment passed in O.S.No.813 of 2004 is not binding the petitioners in respect of the suit properties, it is nothing but collection of evidence.

4. On perusal of the affidavit filed in support of the petition for appointment of Advocate Commissioner, the petitioners stated that on the strength of the decree obtained in O.S.No.813 of 2004, the respondents were attempted to usurp the suit schedule properties which are under the possession and enjoyment of the petitioners herein. In fact, the Special Tahsildar Gramanatham was also issued patta in favour of the petitioners' father after identify the possession and measure the property. Therefore, both the suit properties were different one and the linear measurement claimed by the respondent and the area under their occupation have vast difference and it has to be measured by the Advocate Commissioner with the help of Taluk surveyor.

5. In support of his contention, the learned counsel appearing for the petitioners relied upon the following reported judgments:-

- i) 98 LW 112 - Ponnusamy Pandaram Vs. The Salem Vaiyappamalai Jangamar Sangam*
- ii) 2002 (4) LW 142 - Saraswathy & anr Vs. Vishwanathan*
- iii) CDJ 2004 MHC 947 - Tejraj Sarammal Vs. Bajranglal Daman*
- iv) 2008 (8) SCC 671 - Haryana Waqf Board Vs. Shanti Sarup and ors*

6. In the judgment reported in **2008 (8) SCC 671** in the case of ***Haryana Waqf Board Vs. Shanti Sarup and ors***, the Hon'ble Supreme Court of India held as follows :-

"4. Admittedly, in this case, an application was filed under Order 26 Rule 9 of the Code of Civil Procedure which was rejected by the trial court but in view of the fact that it was a case of demarcation of the disputed land, it was appropriate for the court to direct the investigation by appointing a Local Commissioner under Order 26 Rule 9 of the CPC.

5. The appellate court found that the trial court did not take into consideration the pleadings of the parties when there was no specific denial on the part of the respondents regarding the

allegations of unauthorized possession in respect of the suit land by them as per paragraph 3 of the plaint. But the only controversy between the parties was regarding demarcation of the suit land because land of the respondents was adjacent to the suit land and the application for demarcation filed before the trial court was wrongly rejected.

6. It is also not in dispute that even before the appellate court, the appellant-Board had filed an application for appointment of a Local Commissioner for demarcation of the suit land. In our view, this aspect of the matter was not at all gone into by the High Court while dismissing the second appeal summarily. The High Court ought to have considered whether in view of the nature of dispute and in the facts of the present case, whether the Local Commissioner should be appointed for the purpose of demarcation in respect of the suit land."

7. It is also relevant to rely upon the judgment passed by this Court reported in **CDJ 2004 MHC 947** in the case of **Tejraj Sarammal Vs. Bajranglal Daman**, which reads as follows :-

"5.(2) A.Nagarajan vs. - A.Madhanakumar reported in 1996-1, Law Weekly 278, in which this Court has held:- " 'For the purpose of elucidating facts in respect of any matter in dispute' means where the circumstances render it expedient in the interest of justice to do so, the Court has power, which is discretionary in nature, to appoint Commissioner for the purpose of ascertaining, to made it clear, intelligible, and 'to throw light upon the matter in issue' means the main dispute as well as the facts leading to the dispute. This course may be adopted after the examination of the party or parties or suo motu. If the court feels that clarification or confirmation is necessary on certain aspects on which the court entertains doubt in the matters in issue or dispute, or the disputed questions of fact, for the purpose of ascertaining, clarification, or for proper scrutiny and examination, this course can be resorted to."

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8. This Court as well as the Hon'ble Supreme Court of India held

that the application under Order 26 Rule 9 of CPC appropriate for the Court to direct the investigation by appointing a local Commissioner. The Advocate Commissioner can be appointed for the purpose of demarcation in respect of the suit land, since the suit property is situated adjacent to the property owned by the defendants. Further held that the Court has power, which is discretionary in nature to appoint Commissioner for the purpose of ascertaining, to made it clear intelligible, and to throw light upon the matter in issue means the main dispute as well as the facts leading to the dispute. The above judgments are squarely applicable to the case on hand, since in the present suit, the petitioner sought for appointment of Advocate Commissioner to measure the suit property with the help of Taluk Surveyor in accordance with the records maintained by the Special Tahsildhar Gramanatham.

9. In view of the above discussions, the order dated 25.02.2016 passed by the learned District Munsif at Poonamallee in I.A.No.1393 of 2015 in O.S.No.305 of 2014, is hereby set aside. The Court below is directed to appoint an Advocate Commissioner to inspect the suit property

and to measure the same with the records maintained by the Special Tahsildhar, Gramanatham and measure the same with the help of Taluk Surveyor.

10. Accordingly, the Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

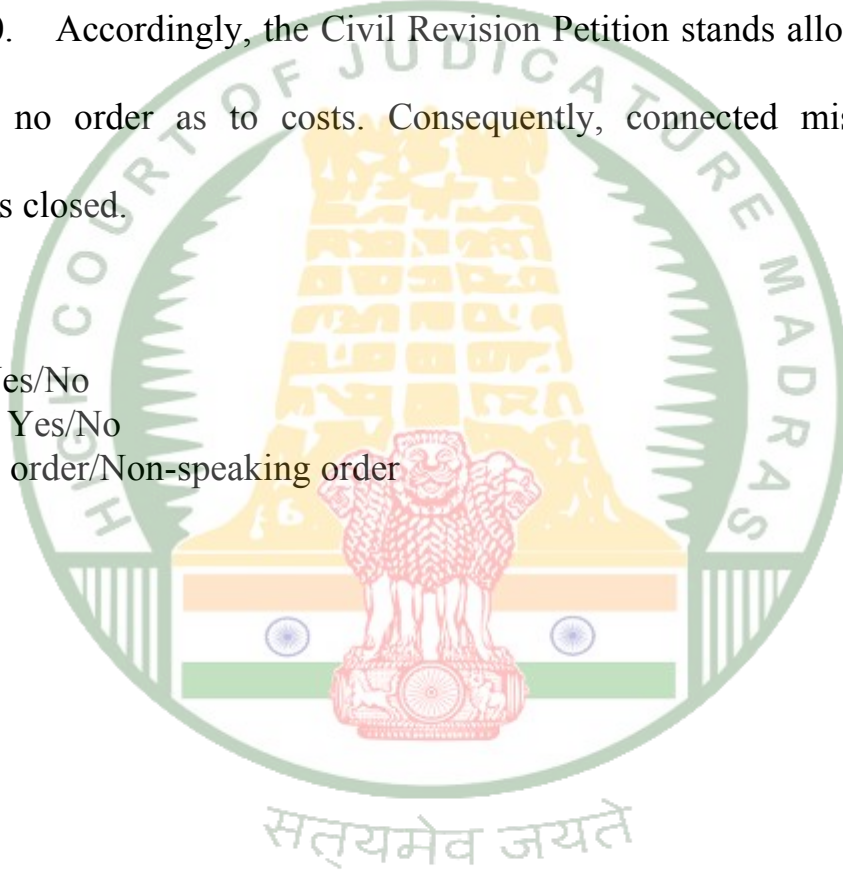
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Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

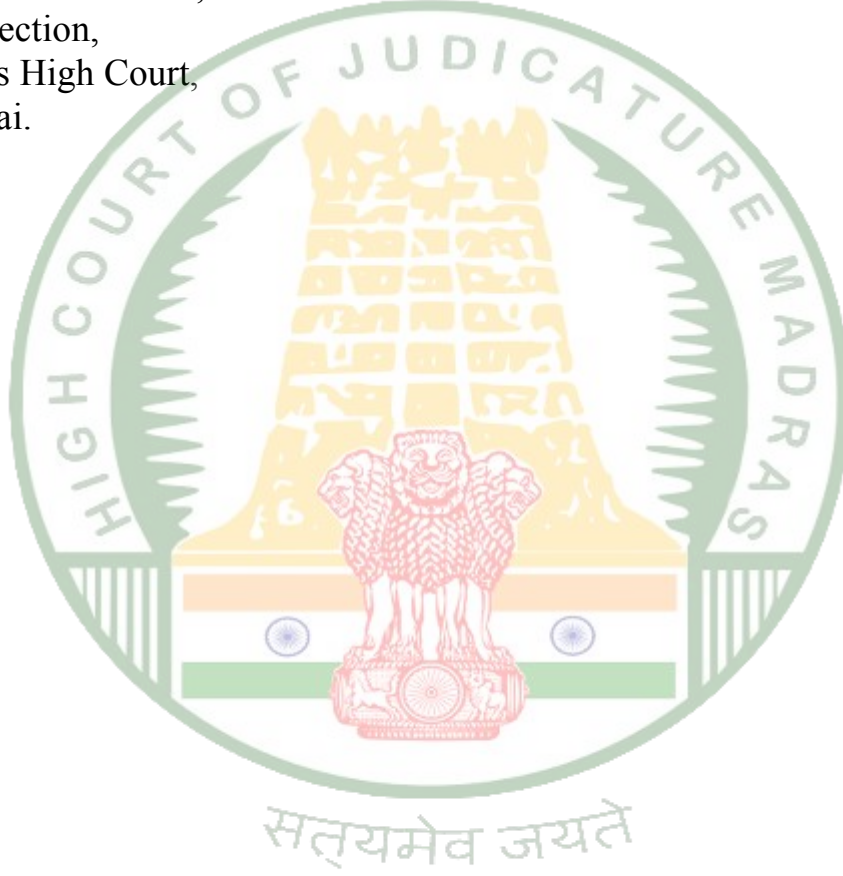
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To

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

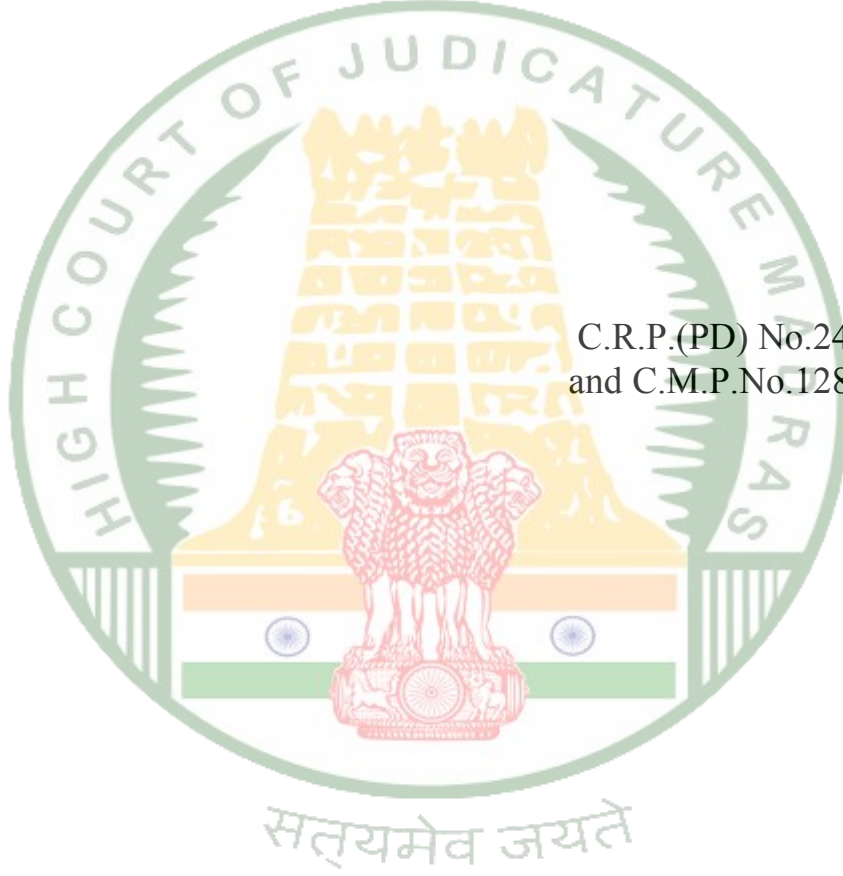


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