

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CRP(PD).No.2249 of 2018
and CMP.No.14112 of 2018

1.S.Chinnaiya Reddy

2.Maragatham

... Petitioners

Versus

1.K.Chidambaram

2.C.Ambiga

3.The Thasildhar,
Vellore Taluk Office,
Vellore.

4.The District Collector,
Vellore – 9.

5.Jayanthi

... Respondents

Civil Revision is filed under Article 227 of the Constitution of India, to set aside the order and decree dated 05.06.2018, made in I.A.No.1410 of 2017 in O.S.No.112 of 2017, on the file of the Additional District Munsif, at Vellore, by allowing the present Civil Revision Petition.

For Petitioners : Mr.A.Gouthaman

For Respondents : No appearance

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ORDER

The Civil Revision Petition is filed to set aside the order and decree dated 05.06.2018, made in I.A.No.1410 of 2017 in O.S.No.112 of 2017, on the file of the Additional District Munsif, at Vellore, by allowing the present Civil Revision Petition.

2.The learned counsel appearing for the petitioners submitted that the petitioners herein filed an Interlocutory application in I.A.No.1410 of 2014 for the appointment of the Advocate Commissioner to inspect the suit property along with the Taluk Surveyor and find out the damages of iron wire fencing, stones, buildings and coconut trees by the respondent and find out the salient features of the suit properties with boundaries and file the report along with the rough sketch.

3.Further the learned counsel appearing for the petitioners submitted that the suit is filed for declaration and for bare injunction. The Court below, without considering the necessity for the appointment of the Advocate Commissioner, it has dismissed the application stating that the Advocate Commissioner cannot be appointed to find out the factum of possession of any

property relating to the dispute, or to find out the evidence. In fact appointment of the Advocate Commssioner would help this court to adjudicate the case in a proper manner and to arrive at a correct finding.

4.In support of his contention, the learned counsel appearing for the petitioner referred the Judgment rendered by this court in the case of ***B.Amutha /Vs./ Anandhi Sankara Narayanan*** reported in ***2016 5 Law Weekly 658***. By referring the above case, he submitted that there is no bar for appointing the Advocate Commissioner in the present suit. Therefore, the finding of the court below is improper and the same is liable to be set aside.

5.Heard the learned counsel appearing for the petitioners. Though the respondents appeared through the learned counsel, but today none appeared for the respondents.

6.Upon hearing and on perusal of the order of the Court below, the plaintiff filed this suit for declaration of the plaintiff's title to the suit properties mentioned in the schedule, to grant permanent injunction restraining the defendant his men and agents, servants, subordinates etc from interfering with the plaintiff peaceful possession and enjoyment of the suit properties; to

appoint an Advocate Commissioner to inspect the suit property and to measure the same with the help of Taluk Surveyor and to file a report with plan and awarding the cost of suit for the plaintiff.

7. Admittedly, the suit was filed for the purpose of declaration and permanent injunction and not for damages. He has filed an application in I.A.No.1410 of 2017, for the appointment of the Advocate Commissioner to inspect the property along with the Taluk Surveyor to find out the damages caused by the defendants to iron wire fencing, stones, buildings and coconut trees by the defendant and find out the salient features of the suit properties with boundaries.

8. When the suit was filed for the declaration of title and permanent injunction, the appointment of the Advocate Commissioner is sought to file a report on the damages with regard to iron wire fencing, stones, buildings and coconut trees by the respondents and find out the salient features of the suit properties with boundaries. The said report of the Advocate Commissioner is no way going to help the court to arrive at a finding whether the respondents interfering with the peaceful possession of the plaintiff's suit schedule property or not and for declaration of title.

9.It is for the revision petitioners to establish and to prove their case by way of documentary as well as the oral evidences with regard to the interference of the plaintiff's peaceful possession. The case of the revision petitioners is to find out the damages of iron wire fencing, stones, buildings and coconut trees by the respondent and find out the salient features of the suit properties with boundaries.

10.In the present case, the revision petitioners have not filed any suit for damages, thus the finding of the damages with regard to iron wire fencing, stones, buildings and coconut trees by the respondents, will no way going to help the court to adjudicate the dispute among the parties

11.Due to the nature of relief sought in the suit, to adjudicate the present dispute among the parties, the ascertainment of damages by the Advocate Commissioner is not necessary.

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12.Thus, I am of the opinion that there is no merit in the present Civil Revision Petition. The Court below has considered and passed a detailed order and there is no need to interfere with the order passed by the Court below. Hence, the above said Civil Revision Petition deserves to be dismissed.

13.In view of the above, this Civil Revision Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

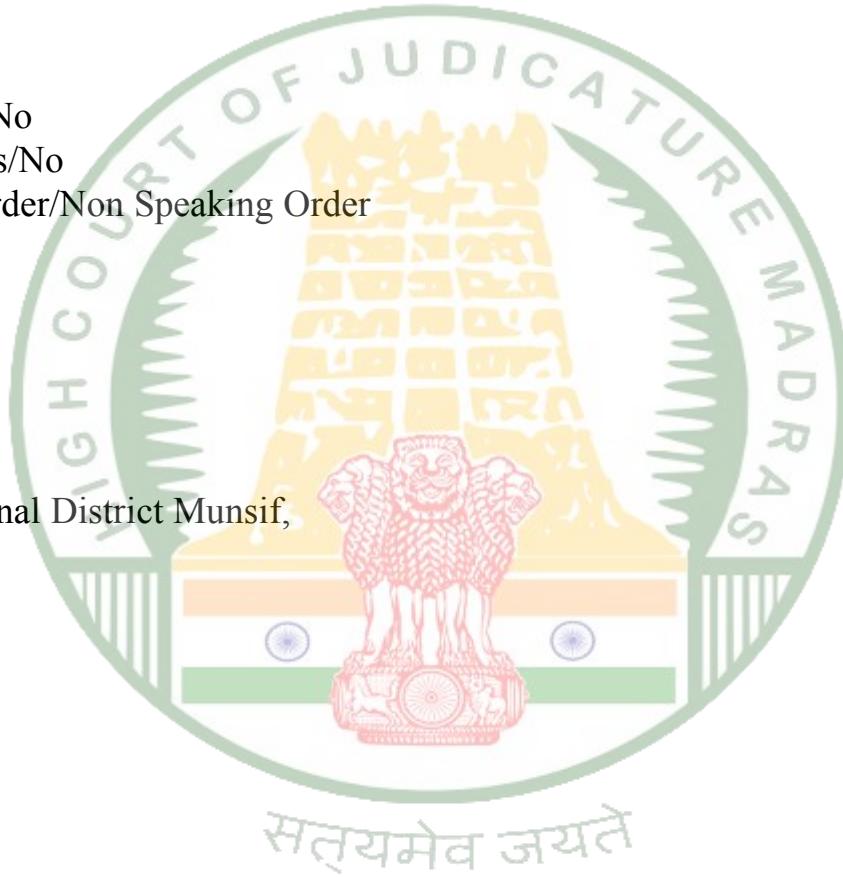
10.03.2021

Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order

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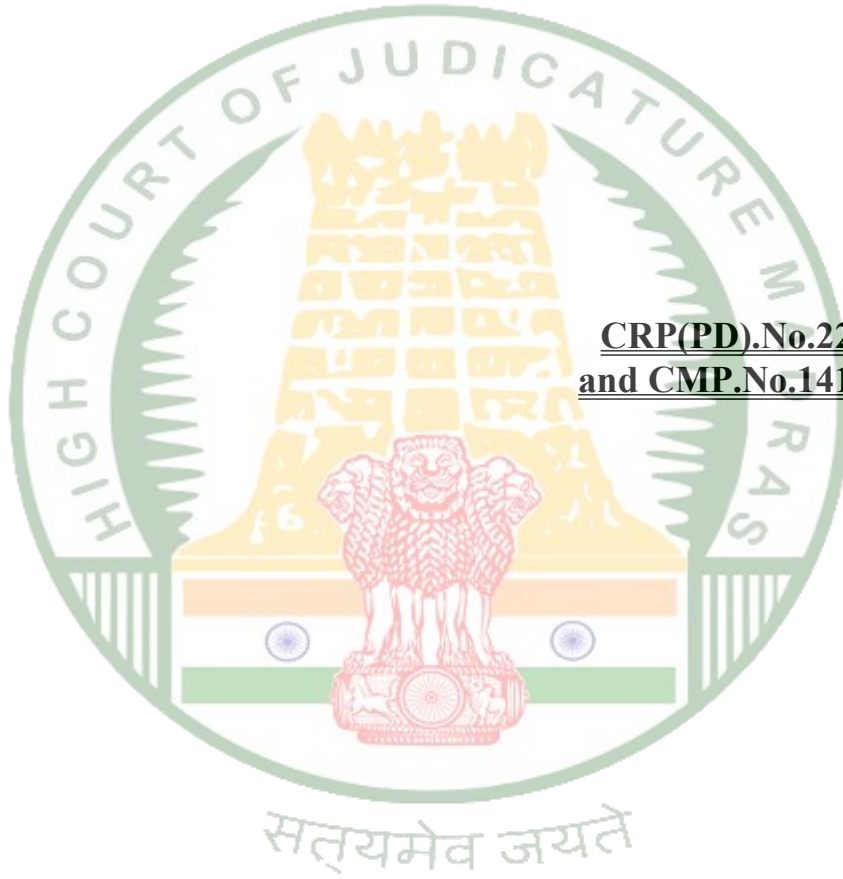
To

The Additional District Munsif,
Vellore.



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KRISHNAN RAMASAMY, J.,
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