

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (PD) No.1004 of 2021
and
C.M.P.No.8089 of 2021

Shanmugam

..Petitioner/Respondent/Defendant

Vs

Mathialagan

..Respondent/Applicant/Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 16.03.2021 passed in I.A.No.27 of 2021 in O.S.No.50 of 2018 passed by the learned Additional Subordinate Judge Dharmapuri, Dharmapuri District.

For Petitioner

..

Mr.M.R.Jothimanian

For Respondent

..

Mr.B.Gopalakrishnan

ORDER

Heard Mr.R.Jothimanian, learned counsel for the petitioner and Mr.B.Gopalakrishnan, learned counsel who entered appearance on behalf of the respondent in his capacity as caveator.

2.This present Civil Revision Petition has been filed by the defendant in O.S.No.50 of 2018 which is now pending on the file of the Additional Subordinate Court, Dharmapuri. O.S.No.50 of 2018 had progressed considerably from the date of its institution.

3.The written statement had been filed and the Court had also framed the issues and had invited the parties to adduce evidence. The plaintiff and the defendant then took up the invitation and evidence was also recorded. Thereafter, the matter was posted for advancing arguments.

4.At that particular stage, the plaintiff had filed an application under Order 26 Rule 9 of CPC seeking appointment of an Advocate Commissioner. That application was filed in I.A.No.27 of 2021. The Interlocutory Application came up for consideration before the learned

Additional Subordinate Judge, Dharmapuri, on 16.03.2021 and the learned Judge thought it fit to allow the said application.

5.Questioning the rationale behind the said order, the defendant has preferred the present civil revision petition.

6.The suit in O.S.No.50 of 2018 had been filed seeking the relief for declaration of title and recovery of possession with respect to the property which has been described as B-Schedule in the plaint. The plaintiff claimed that the defendant had encroached the property and had put up a construction in the suit property. Those assertions by the plaintiff had been denied by the defendant. Necessary pleadings had been advanced by both the parties. Issues have also been framed. They also tendered evidence. Evidence had also been tested during cross-examination. That evidence will have to be now analyzed by the learned Additional Subordinate Judge, Dharmapuri who has to go through the same and pick out the admissible parts and thereafter, will have to give a finding with respect to each and every issue framed for trial.

7. Taking recourse to appointment of an Advocate Commissioner report, after evidence had been let in by the parties would be setting the clock back and it would not be appropriate on the learned Judge to re-appreciate the evidence in the light of the report of the Advocate Commissioner.

8. Let the learned Additional Subordinate Judge, Dharmapuri, examine the evidence already adduced by the parties. This is the evidence which comprises the facts they know and had been tested during cross-examination when they grazed the witness box. That evidence has to be now analyzed.

9. I am not inclined to uphold the reasons given in the order, particularly that part where the learned Judge had stated that the report of the Advocate Commissioner would determine whether there is encroachment in the suit property. Naturally this would require a finding of possession on the suit property. The Advocate Commissioner is not an authorized person to give such a finding and the learned Judge should not expect such a finding from the Advocate Commissioner. The burden is heavily on the plaintiff to establish title but also the necessity for recovery of possession.

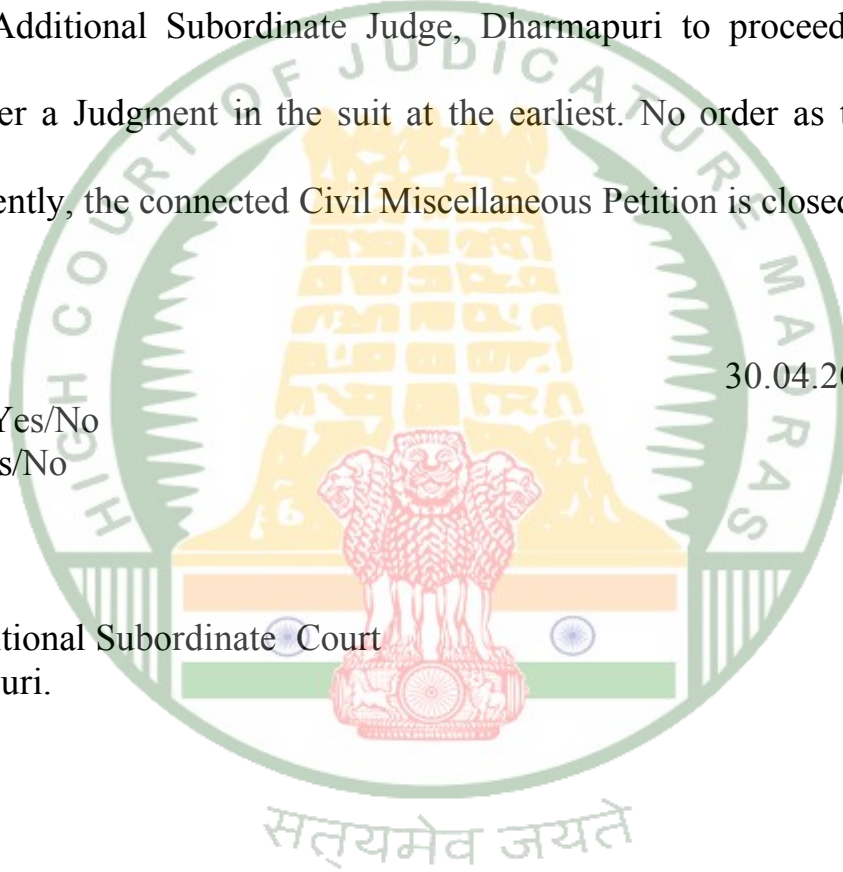
10.The order is therefore interfered with and the said order in I.A.No.27 of 2017 dated 16.03.2021 is set aside.

11.This Civil Revision Petition is allowed with a direction to the learned Additional Subordinate Judge, Dharmapuri to proceed further and render a Judgment in the suit at the earliest. No order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

30.04.2021

Internet:Yes/No
Index:Yes/No
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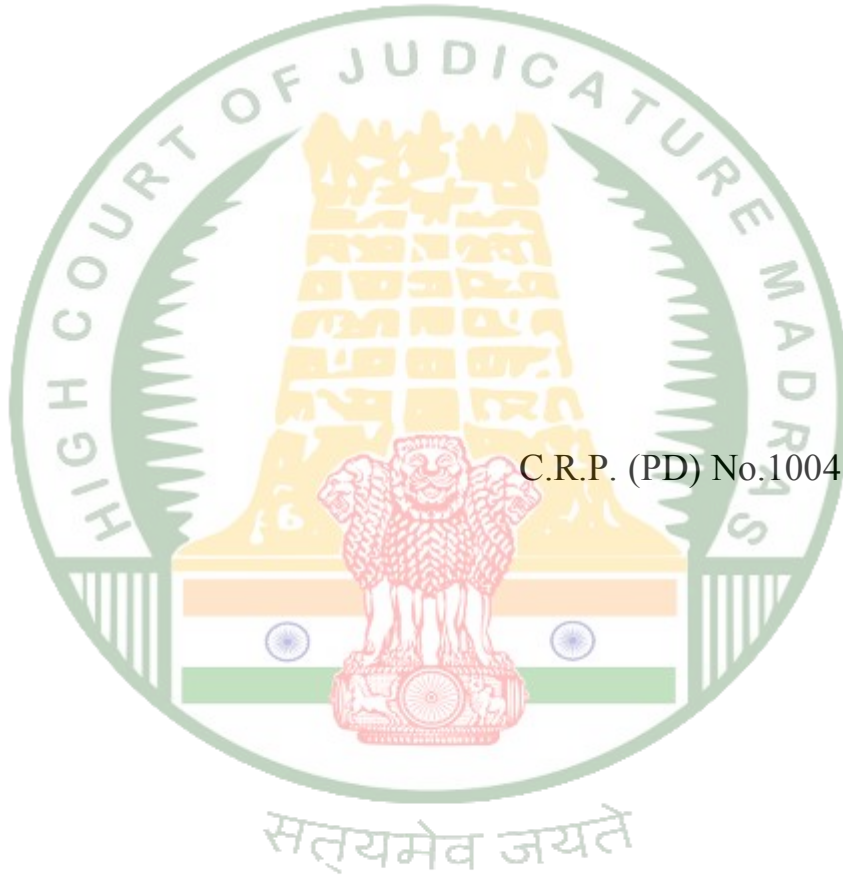
To
The Additional Subordinate Court
Dharmapuri.



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C.V.KARTHIKEYAN,J.

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