

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(NPD) No.2641 of 2018
and C.M.P.No.15815 of 2018

1.A.Ganesa Naicker
2.G.Arjunan

... Petitioners

Vs

1.V.Dhananjayan
2.G.Parthiban
3.G.Vilvijayan @ Nallan

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 14.12.2017 in I.A.No.91 of 2017 in A.S.No.171 of 2014 on the file of the Subordinate Judge, Arakonam, Vellore District.

For Petitioners : Mr.R.Rajarajan

For Respondents : Mr.V.S.Jagadeesan for R1
R2 - Notice Served
R3 - Died (Steps Due)

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 14.12.2017 in I.A.No.91 of 2017 in A.S.No.171 of 2014 on the file of the Subordinate Judge, Arakonam, Vellore District, thereby dismissing the application seeking appointment of an Advocate Commissioner.

2. The petitioners herein and the respondents 2 and 3 herein are the defendants and the first respondent herein is the plaintiff in O.S.No.198 of 2002 on the file of the District Munsif, Arakkonam. The first respondent herein filed the said suit for bare injunction in respect of the suit property and the same was decreed on 11.10.2011. Aggrieved by the same, the petitioners and the respondents 2 and 3 filed an Appeal Suit on the file of the Subordinate Judge at Ranipet.

3. Pending the Appeal Suit, the petitioners and the respondents 2 and 3 filed an application seeking appointment of an Advocate Commissioner to inspect the suit property along with the surveyor to note down the physical features of the same and the same was dismissed on 14.12.2017. Aggrieved by the same, the above Civil Revision Petition has been filed.

4. The learned counsel for the petitioners would submit that the suit property has a New Sub-divided Survey Number. As per the partition deed dated 07.05.1976, the Survey Number was given without sub-division. Taking advantage of the same, the first respondent herein filed the said suit stating that all the residents in the street left 20 feet Road. Therefore, he claimed 20 feet in front side and after 20 feet, he claimed East to West 96 feet. Accordingly, he encroached some portion of the property beyond the suit property. Therefore to identify the suit property and also know the extent of the suit property, an Advocate Commissioner should be appointed even in the suit for bare injunction.

5. Admittedly before the Court below the petitioners as well as the respondents did not file any application seeking appointment of an Advocate Commissioner, since the suit is for bare injunction. A perusal of the affidavit revealed that beyond the suit property, now the first respondent encroached some of the portion belonging to the defendants on the strength of the decree. Under these circumstances, the Advocate Commissioner can be appointed to identify the suit property and also to measure the suit property to know the extent of the suit property.

6. Therefore, the Order dated 14.12.2017 made in I.A.No.91 of 2017 in A.S.No.171 of 2014 passed by the file of the Subordinate Judge, Arakonam, Vellore District is set aside. The Court below is directed to appoint an Advocate Commissioner to identify the suit property and also to measure the same.

WEB COPY

7. Accordingly, this Civil Revision Petition is allowed. No order as to costs. Consequently, the connected miscellaneous petition is closed.

14.07.2021

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
ma

To

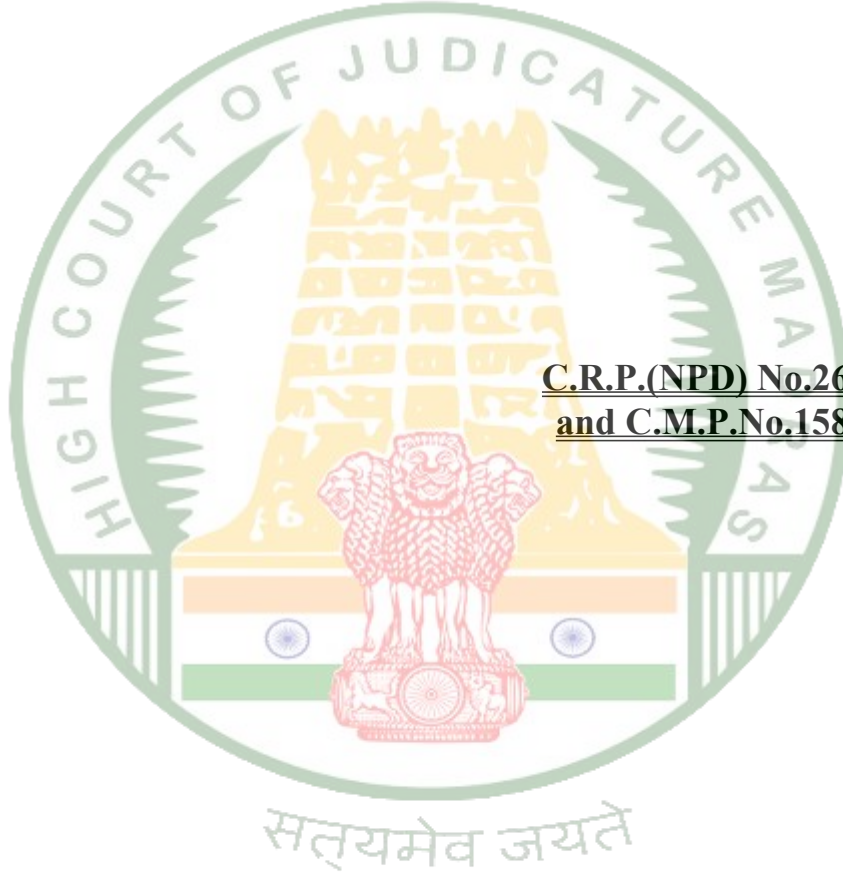
The Subordinate Judge,
Arakonam,
Vellore District.



WEB COPY

G.K.ILANTHIRAIYAN. J,

rna



C.R.P.(NPD) No.2641 of 2018
and C.M.P.No.15815 of 2018

WEB COPY

14.07.2021