

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2021

Coram

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

C.R.P. (PD) No.1197 of 2021
and C.M.P.No.9242 of 2021

Murugesan Petitioner

Vs

Madaiyan Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order dated 25.02.2020 made in I.A.No.1373 of 2015 in I.A.No.1577 of 2012 in O.S.No.366 of 2012 on the file of the District Munsif Court, Sankari.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : No Appearance

ORDER

The Revision Petitioner is the plaintiff in O.S.No.366 of 2012 now pending on the file of the District Munsif Court, Sankari. The said suit had been filed seeking permanent injunction restraining the defendant from interfering with peaceful possession of the plaintiff particularly by putting up a fence and thereby disturbing the plaintiff's peaceful possession and enjoyment of the suit property.

2. The written statement has also been filed.

3. During the course of the progress of the suit, the plaintiff originally filed I.A.No.1577 of 2012 seeking appointment of an Advocate Commissioner. An Advocate Commissioner was also appointed. He also inspected the suit property and it is informed by Mr.R.Marudhachalamurthy very fairly, that the inspection was conducted in the presence of the plaintiff and the defendant.

4. The learned Advocate Commissioner had then filed a report dated 21.03.2013. The plaintiff has serious grievances against the said

report. Therefore he filed objections to the said report. It is the case of the learned counsel for the Revision Petitioner herein that as many as 20 points has been filed as objections pointing out various lacuna in the report of the Advocate Commissioner. Not satisfied with filing objections and having an apprehension that the said objections would be simply wiped away by the Court, the petitioner / plaintiff herein also filed I.A.No.1577 of 2012 seeking to appoint a fresh Advocate Commissioner. The learned Judge, on 25.02.2020, by the order which is now questioned in the present Revision Petition, had dismissed the said Interlocutory Application in I.A.No.1373 of 2015.

5. The learned counsel for the Revision Petitioner however stated that it is imperative that a new Advocate Commissioner is appointed and that the report originally filed should be scrapped.

6. I am informed that trial has not commenced. At this stage, the report of the Advocate Commissioner and the objections filed are records of the Court which have not yet been taken Judicial note by the learned Judge. They can be taken note only when the Advocate Commissioner

grazes the witness box either on invitation of the plaintiff or by the defendant or by the Court on its own motion.

7. The report should be marked as an exhibit and the Commissioner should be tested during deposition with respect to the various aspects mentioned in the report. Naturally, the plaintiff will also have to put the objections he was raised to the Advocate Commissioner and elicit reasons on the various objections raised. If at that stage, it is apparent to the Court that the report of the Commissioner is not satisfactory or that it has not served the purpose for which the Advocate Commissioner was originally appointed and it is urged that in the interest of both the parties the Advocate Commissioner is required to re-visit the property, then the Court may take an appropriate decision.

8. It must be kept in mind by the learned District Munsif, Sankari that the Advocate Commissioner is an extension of the arms of the Court and as an Officer of the Court, the Advocate Commissioner should have effectively discharge the warrant and any report must be effective enough to bring about the ends of justice with respect to the issues raised in the suit. If the Advocate Commissioner's report is not satisfactory, then

naturally the Court should, whatever may be the stage of the suit, take upon itself or on the application of either one of the two parties, seek for a further report either from the same Advocate Commissioner or from a different Advocate Commissioner. These are issues on which decisions can be taken only after examining the evidence of the Advocate Commissioner. Liberty is given it to the plaintiff herein, if so advised, to summon the Advocate Commissioner after examination of the plaintiff witnesses.

9. With the said observations, the Civil Revision Petition is disposed of. No order as to costs. Consequently, the connected miscellaneous petition is closed.

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Internet: Yes/No

Index: Yes/No

rna

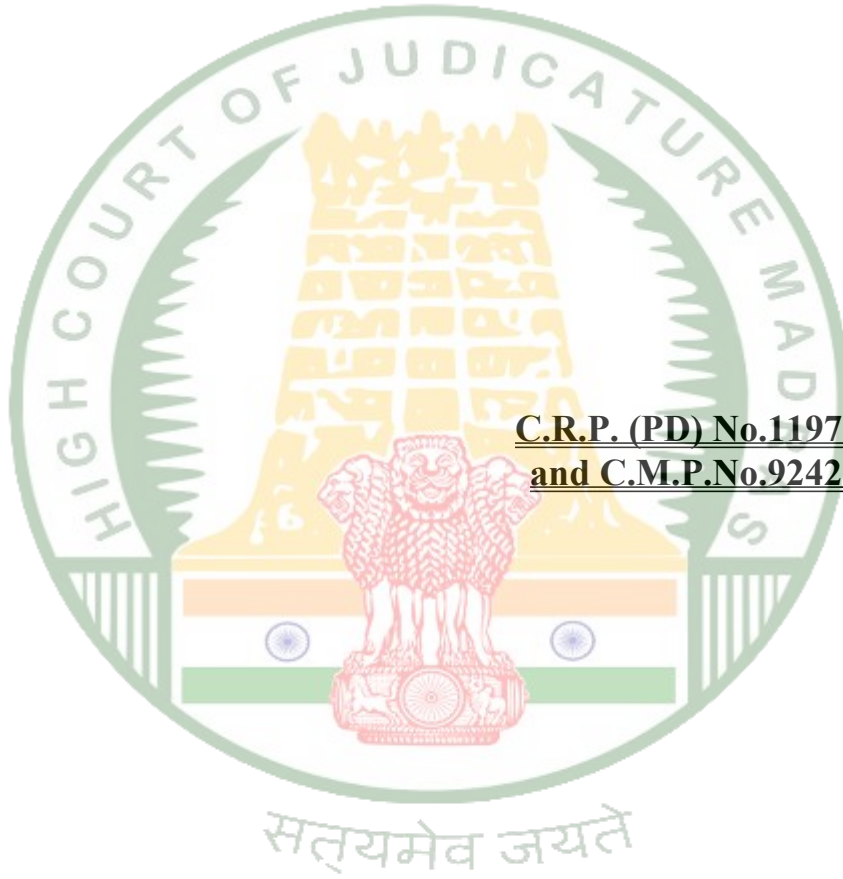
To

The District Munsif Court,
Sankari.

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C.V.KARTHIKEYAN,J.

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