

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2021

CORAM

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

C.R.P.(PD)No.524 of 2018
and C.M.P.No.2749 of 2018

1. Sanakragiri
2. Kumar Bai

... Petitioners

Vs.

1. Selvakumar
2. K.Ramasamy

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decree dated 12.12.2017 made in I.A.No.623 of 2017 in O.S.No.29 of 2017 on the file of the learned Principal District Munsif, Cuddalore by allowing the revision.

For Petitioners : Mr.P.Dinesh Kumar

For Respondents : Mr. Mohammed Irfan Ali
for Mr.T.S.Bhaskaran

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ORDER

This Civil Revision Petition is filed as against the fair and decreetal order dated 12.12.2017 passed by the learned Principal District Munsif, Cuddalore, in I.A.No.623 of 2017 in O.S.No.29 of 2017, thereby dismissing the petition for seeking appointment of advocate commissioner.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed suit for declaration declaring that the suit property as their family common property, private common pathway of plaintiffs' family and also to remove the encroachment put up by the respondents in the suit property. After receipt of the summon in the suit, the respondents filed written statement and categorically stated that the shed which was put up by them only to an extent of 10 ft. X 10 ft. on the north-west corner of the Odai common pathway, on the south of plot No.24 and it will never obstruct the way to graveyard as alleged in the plaint. Further stated that the defendants are using the Odai to tie their cattle for several decades that too during night time.

3. While pending the suit, the petitioners filed application in I.A.No.623 of 2017 seeking appointment of Advocate Commissioner to visit the suit property with the help of taluk surveyor to find out the area of encroachment by the respondents in the suit property and to draw a plan with boundaries and measurements. The trial Court dismissed the said petition as against which, the present Civil Revision Petition.

4. Admittedly, the respondents put up a shed to an extent of 10 ft. X 10ft. in the suit property. Whether the suit property is a private plaintiffs' family common property or common pathway to general public to be decided in the main suit. Therefore, the appointment of advocate commissioner would not serve any purpose as claimed in the suit. That apart as stated supra, the respondents categorically admitted the fact that they put up shed in the suit property to the extent of 10 ft X 10 ft., on the north-west corner of the Odai common pathway. Therefore, if the petitioners succeeded in their suit in respect of the first prayer, they are entitled for the decree of mandatory injunction to remove the encroachment put up by the respondents in the suit property. Therefore, the Court below

rightly dismissed the petition for appointment of advocate commissioner and this Court finds no infirmity or illegality in the order passed by the Court below.

5. Accordingly, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

23.06.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

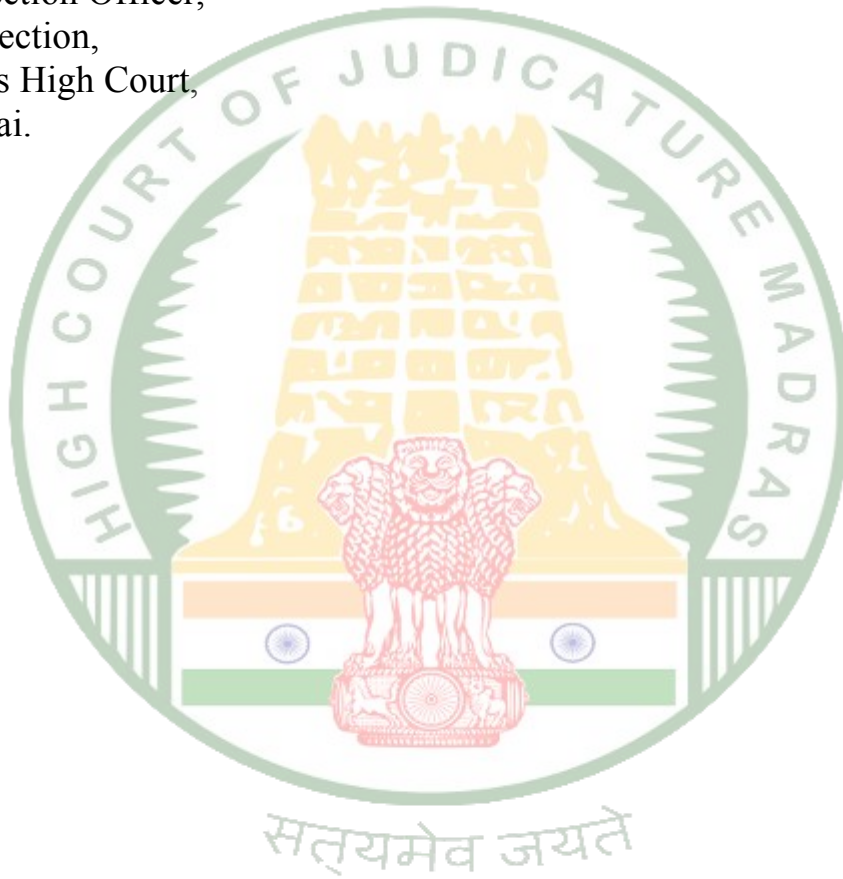
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To

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

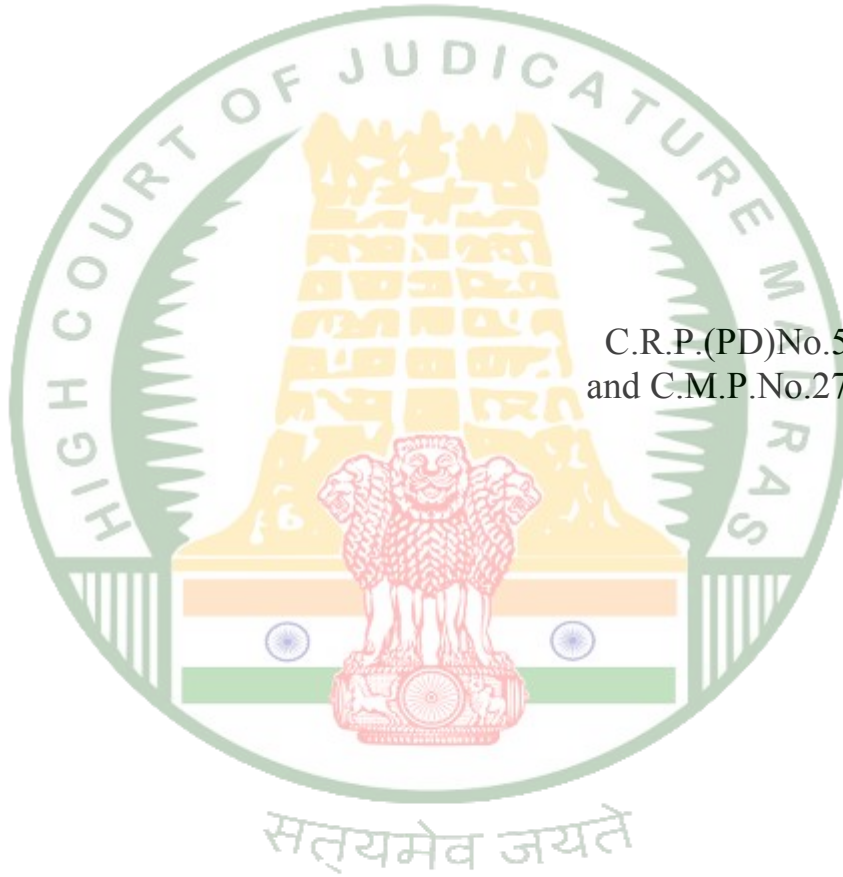


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G.K.ILANTHIRAIYAN, J.

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