

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2021

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THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(PD) No.1687 of 2021
and C.M.P.No. 13078 of 2021**

Fathima Beevi ...Petitioner

Vs.

Shahul Hameed ...Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order passed by the Learned District Munsif cum Judicial Magistrate, Portonora in filing No.O.S. No.26/2021, dated 29.07.2021 and take the plaint on file.

For Petitioner : Mr. T. Saravanan

ORDER

This Civil Revision Petition is filed, seeking a direction to the Learned District Munsif cum Judicial Magistrate, Portonova, to take the plaint on file, filed in O.S.SR.No.26/2021, dated 29.07.2021.

2. The Learned Counsel for the petitioner submitted that a suit in O.S No.44/2015 has been filed by the respondent against the petitioner and one

Mohamed Ali, seeking the relief of declaring the title over the suit property and for permanent injunction. The petitioner herein entered appearance, filed written statement and contested the suit in O.S.No.44 of 2015. Pending suit, the petitioner filed an application in I.A.No. 256 of 2020 in O.S.No.44 of 2015 for summoning certain documents from the Thasildar, Chidambaram and Sub Registrar Portonova (Parangipettai).

3. The above said I.A.No.256 of 2020 was dismissed on 21.08.2020 and as against the dismissal of the same, the petitioner herein preferred a Civil Revision Petition in C.R.P.No.2010 of 2020 and stay was granted in C.M.P.No.12469 of 2020 on 18.11.2020. The stay is still in force. Meanwhile, the respondent has entered into the suit property and cut all the trees worth about Rs.1,00,000/- and had taken away. He is now taking steps for construction of building in the suit property. When that was resisted, the respondent made a criminal intimidation against the petitioner and in this regard, a criminal complaint was given by the petitioner against the respondent on 28.06.2021 before the Parangipettai police station. The conduct of the respondent necessitated the petitioner for filing the present suit in O.S.SR.No.26 of 2021 seeking the relief of permanent injunction.

4. The Learned District Munsif Cum Judicial Magistrate, Portonovo

(Parangipettai) when considering the plaint made a return citing the pendency of O.S.No. 44 of 2015 on the file of the learned Principal Subordinate Court, Chidambaram; the pendency of C.R.P.No.2010 of 2020 on the file of this Court; citing the fact that stay was granted staying all further proceedings in O.S.No.44 of 2015 besides stating the reason that there is a dispute with regard to the title of the suit property and therefore, the suit filed without the prayer for declaration of title, cannot be entertained.

5. The grievance of the Learned Counsel for the petitioner is that, the earlier suit was filed by the respondent claiming declaration of title and injunction. While the suit was pending, the respondent had cut some of the trees and tried to make construction in the suit property. Since there an order of stay of further proceedings in O.S.No.44 of 2015, the petitioner has no option but to file the present suit for the relief of permanent injunction restraining the respondent from interfering the possession and enjoyment of the suit property.

6. The facts of the case narrated above shows that obviously there is a dispute with regard to the title and possession with regard to the suit property. Of course, the previous suit in O.S.No.44 of 2015 filed for the relief of declaration of title of permanent injunction. The cause of action for filing the present suit is that pending suit in O.S.No.44 of 2015, the respondent cut some

trees and tried to construct building. This is a fresh cause of action. There is also a stay of further proceedings in O.S.No.44 of 2015 ordered in C.R.P.No.2010 of 2020 on 18.11.2020. In the said circumstances filing the present suit for the relief of permanent injunction on a different and new cause of action, cannot be termed as illegal. Since, there is a fresh cause of action, the petitioner is entitled to file the present suit against the respondent.

7.In view of the above facts and circumstances of the case, this Court is of the view that, the order of return made by the Learned District Munsif Cum Judicial Magistrate, Portonovo (Parangipettai) is liable to be set aside and accordingly set aside. Consequently, the Learned District Munsif Cum Judicial Magistrate, Portonovo (Parangipettai) is directed to number the plaint, if it is otherwise in order and proceed further in accordance with law. Accordingly this Civil Revision Petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

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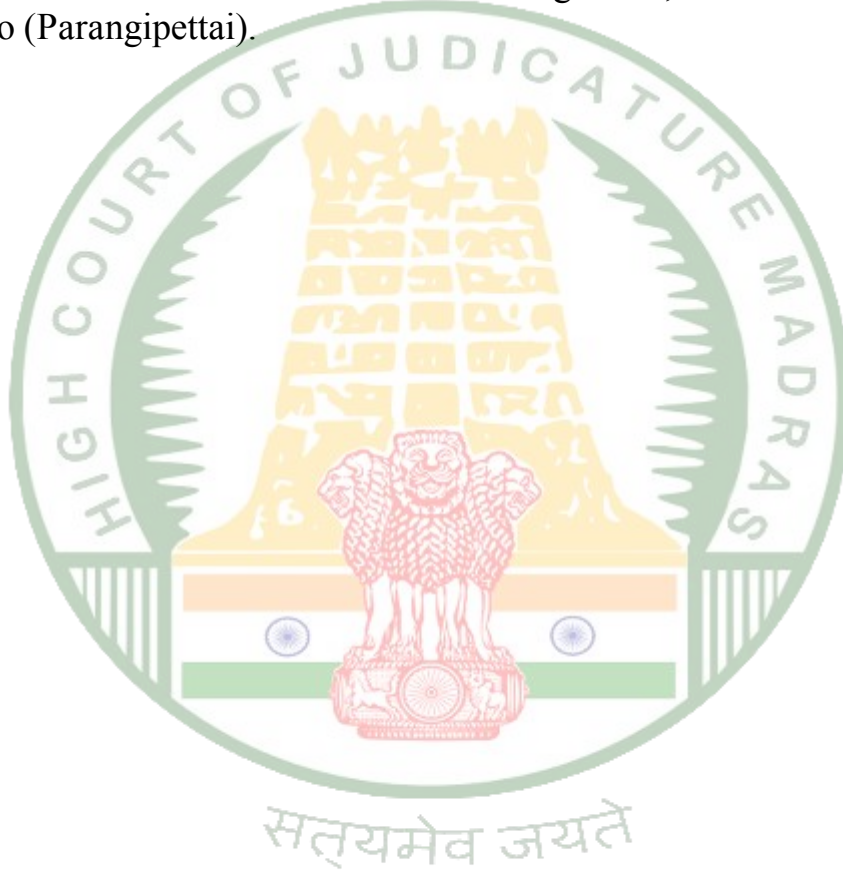
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Index:Yes/No

Internet:Yes/No

Speaking Order: Yes/No

To
The Learned District Munsif Cum Judicial Magistrate,
Portonovo (Parangipettai).

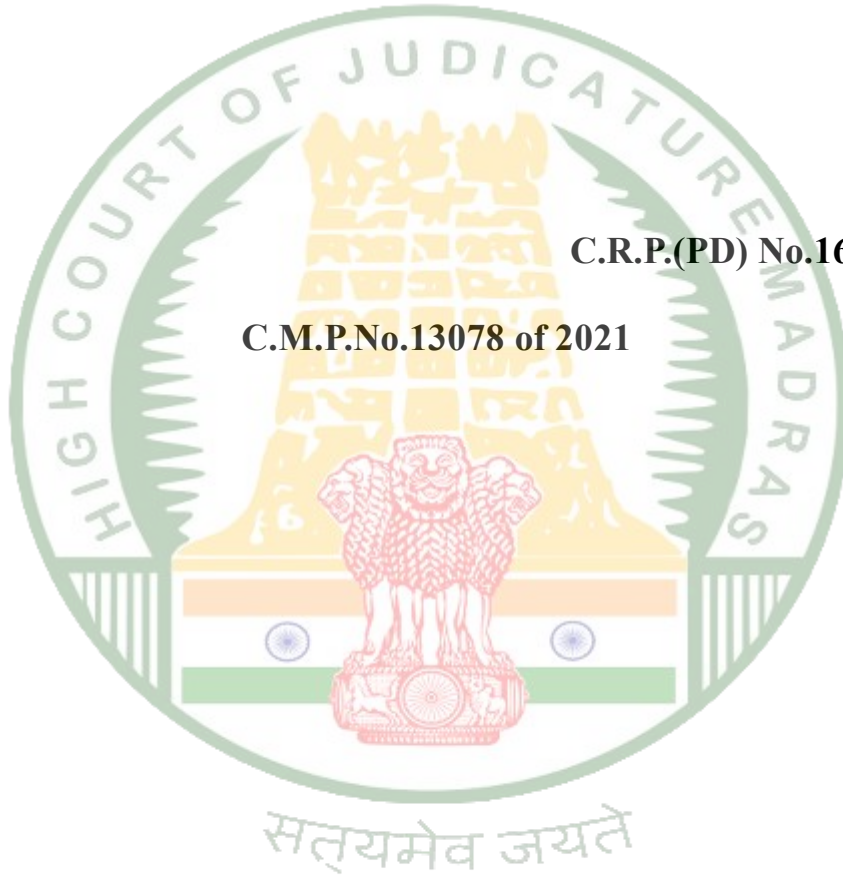


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