

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.08.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) No.2053 of 2019

and C.M.P. No.13283 of 2019

P.Palanisamy

... Petitioner

Vs.

1.Chithambaram

2.Murugan

3.Kowsalya

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 07.03.2019 in I.A. No.473 of 2017 in O.S. No.95 of 2012 on the file of the District Munsif Court, Gobichettipalayam.

For Petitioner : Mr. V.P.K.Gowtham

For Respondents : No appearance

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O R D E R

This petition is filed to set aside the order in I.A. No.473 of 2017 in O.S. No.95 of 2012, on the file of the District Munsif Court, Gobichettipalayam.

2. I.A. No.473 of 2017 was filed under Order 26 Rule 9 CPC for appointing Advocate Commissioner to inspect the suit property with the help of Surveyor to fix the boundary and file a report along with the plan.

3. Learned counsel appearing for the petitioner submitted that the petitioner filed a suit for bare injunction restraining the respondents from allowing their cattle to graze the lands of the petitioner, to restrain them from obliterating the land and to restrain them from interfering with the suit property. There is also a prayer for mandatory injunction to restore the land which was already obliterated by the respondents. It is seen from the averments made in the petition that already an advocate commissioner had been appointed and inspected the property and filed a report. However, it is necessary to fix the boundary of the suit property with the help of Surveyor. Therefore, this petition.

4. Learned counsel for the petitioner submitted that appointment of an advocate commissioner with the help of surveyor to inspect the property to fix the boundary is absolutely necessary to resolve the issue between the parties. Petition was dismissed without considering the merits of the case. The learned trial Judge by his order dated 07.03.2018, dismissed the petition. Reading of the order shows that the petitioner filed an Interlocutory Application in I.A. No.408 of 2012 for appointment of commissioner. An advocate commissioner was

appointed and he filed a report along with the plan on 19.07.2012. An opportunity was also given to the petitioner to file his objection to the commissioner's report. Since no objection was filed, the petition was closed on 19.07.2012. After four years, the petitioner filed another Interlocutory Application in I.A. No.1499 of 2015, for appointment of advocate commissioner, to inspect the property again and the same was allowed and an advocate commissioner was also appointed. The advocate commissioner again inspected the property and filed a report along with plan on 11.01.2017. The suit was listed for trial and when it was pending for trial, the petitioner again filed this Interlocutory Application seeking appointment of advocate commissioner.

5. The learned trial Judge found that the petitioner had filed the application only to protract the proceedings and dismissed the petition. From the reasons narrated in the order of the District Munsif Judge, Gobichettipalayam, it is made clear that the suit is filed for bare injunction and mandatory injunction. Advocate commissioner was appointed twice. The Advocate commissioner had also visited the suit property twice, inspected the property and filed report along with the plan. The suit was filed in the year 2012 and the matter was listed for trial in the year 2017. On 10.02.2017, again the present petition for appointment of advocate commissioner, to inspect the

property with the help of Surveyor is filed. The attitude of the petitioner clearly shows that he is not interested in conducting trial in this case. He just wants to protract the proceedings by repeatedly filing petitions for appointment of advocate commissioner. The lower Court was liberal enough to allow the petitions on two occasions. This is the third attempt. Finding that the intention of the petitioner was just to drag on the proceedings, the trial Judge had rightly dismissed the petition. This Court finds no reason to interfere with the order of the learned District Munsif Judge, Gobichettipalayam.

6. Considering the facts and circumstances of this case and the relief claimed, this Court is of the considered view that appointment of advocate commissioner with the help of Surveyor is not at all necessary. There are already two advocate commissioner's report filed along with the plan. The advocate commissioner's report will only help the Court in coming to a decision. The decision is not going to be made only on the basis of advocate commissioner's report on plaint. The parties have to prove their case through oral and documentary evidence. The advocate commissioner's report will only act as a piece of evidence. Therefore, the order passed by the learned District Munsif Court, Gobichettipalayam, in I.A. No.473 of 2017 in O.S. No.95 of 2012, dated 07.03.2019, is confirmed.

7. Accordingly, this Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

16.08.2021

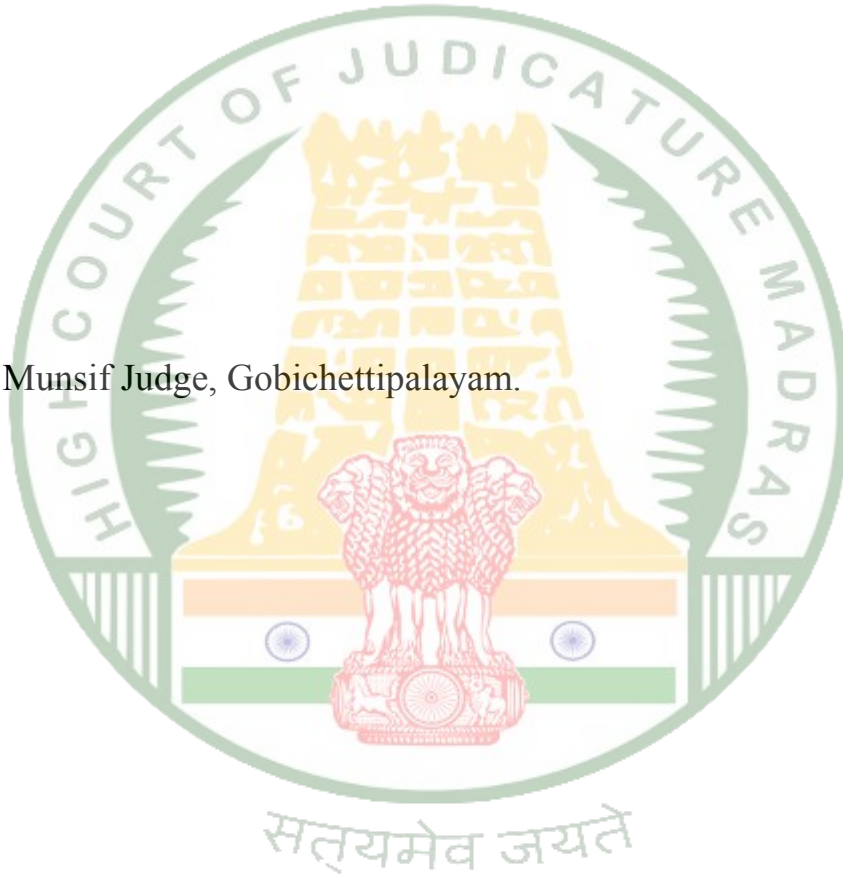
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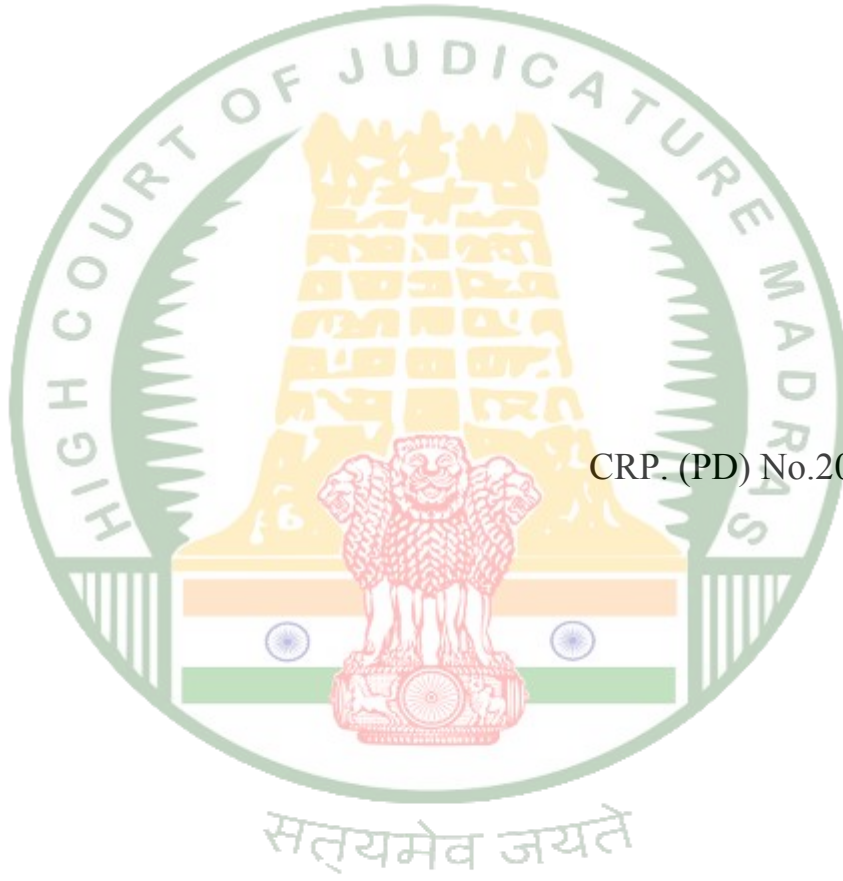
The District Munsif Judge, Gobichettipalayam.



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G.CHANDRASEKHARAN. J.,

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