

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP(PD)No.2005 of 2020

and

CMP.No.12440 of 2020

[Through Video Conferencing]

Amaravathi

... Petitioner/Plaintiff

/vs/

- 1.Murugan
- 2.Govindaraj
- 3.Murugan
- 4.Muthuraj
- 5.Dharuman
- 6.Sivaraj
- 7.Easwaran
- 8.Murugesan
- 9.Beeran
- 10.Kemban
- 11.Nagaraj

... Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the fair and decreetal order dated 07.11.2019 in I.A.No.351 of 2019 in O.S.No.126 of 2012 on the file of the learned District Munsif, Palacode.

For Petitioner : Mr.R.Selvakumar

For Respondents : Mr.Annagandhi

ORDER

The revision petition has been filed questioning the order in I.A.No.351 of 2019 dated 07.11.2019 in O.S.No.126 of 2012 now pending on the file of the District Munsif Court at Palacode.

2.The plaintiff is the revision petitioner herein.

3.It is seen from the cause title that he is 94 years old. It is only appropriate that this Court disposes of the present revision petition as soon as arguments are heard.

4.The suit had been filed against as many as 11 defendants who have all been described as residents of Kadambanur Village in Palacode Taluk, Dharmapuri District.

5.The plaint in O.S.No.126 of 2012 which is now pending for nearly about 9 years and more, has been filed seeking a Judgment and Decree in the nature of a declaration that the plaintiff alone is entitled to the property in the suit schedule and for a permanent injunction restraining the defendants or anybody else interfering with such possession.

6.The property as described in the plaint, has three items. The first one is Survey No.229/2 measuring 1.38.0 hctrs in Patta No.1053 in Jittanda Alli Village in Palacode Taluk, Dharmapuri District. The second item as Door Nos.1/131A, 1/199A with tiled roof which included electricity connection and also Well in Survey No.229/3. The third item is land measuring 0.06.0 hctrs in Survey No.234/2 in Patta No.651 in the same village. All the three items scheduled are in the same village.

7.The suit proceeded its merry course. Written statement was filed. Issues were framed. Parties were invited to the graze witness box. The plaintiff took up such invitation and adduced evidence. He was also cross examined. Defendants also adduced evidence and they were also cross examined. Witnesses were also cross examined.

8.There was an occasion when the plaintiff to come to this Court earlier by filing CRP Nos.206 and 207 of 2016. That was questioning an order in I.A.No.975 of 2015 which order was dated 15.12.2015. The said Interlocutory Application had been filed seeking appointment of an Advocate Commissioner.

9.The dispute was with respect to a pathway. Pursuant to the objections raised by the defendants, an additional issue was framed namely whether the defendant has a right over the pathway in the suit property.

10.As stated, an application had been filed seeking appointment of an Advocate Commissioner. A learned Single Judge of this Court had interfered with the order appointing an Advocate Commissioner, set aside the said order and on the other hand had directed that necessary evidence should be let in and that necessary issues may also be framed.

11.Thereafter I.A.No.351 of 2019 came to be filed by the defendant seeking permission to frame two further issues.

12.Those issues were, whether the defendants and Kadambanur village peoples are having pathway right in the suit property and whether the Kadambanur village people are necessary parties to the suit.

13.The learned Judge permitted framing of such issues and aggrieved by such an order, the plaintiff is before this Court.

14.A Civil Suit is an assertion of a right claimed by the plaintiff as against the defendant. Order I Rule 3 of the Code of Civil Procedure indicates as to whom may be joined as defendants.

15.It is provided in Sub Clause a Order I Rule 3 that any person against whom the plaintiff alleges a cause of action to exist, may be joined as a defendant.

16.Plaintiff in the instant case has joined about 11 defendants who are all residents of Kadambanur village and against whom he had alleged a cause and therefore a necessity to institute the suit seeking declaration of title and injunction.

17.The defendants have joined issue and had also filed a written statement. In the written statement they stated that there is a pathway in the suit property which the people of Kadambanur village use. Therefore an additional issue was also framed stating whether the defendants have a right to the pathway in the suit property.

18.Extending that particular right to all the people in Kadambanur village may not be appropriate. The issues will have to be framed based on pleadings.

19.The Judgment on this particular aspect is *AIR 2001 SC 965. (Santhosh Hasari vs. Purushothaman)*. In that Judgment, Hon'ble Supreme Court no doubt while examining the scope of a Second Appeal had examined the nature of issues to be framed and very specifically stated that no issue can be framed which is not pleaded and disputed by the parties to the suit.

20.Here the plaintiff has sought a declaration over the suit property. Defendants assert their right over a path way. Necessary issue on that particular aspect had been framed, as an additional issue. Parties are already gone to trial.

21.I would interfere with the order passed since an additional issue had already been framed. The defendants are protected by the additional issue already framed namely whether the defendant have a right of pathway over the suit property. That issue will now have to be answered by the learned Judge.

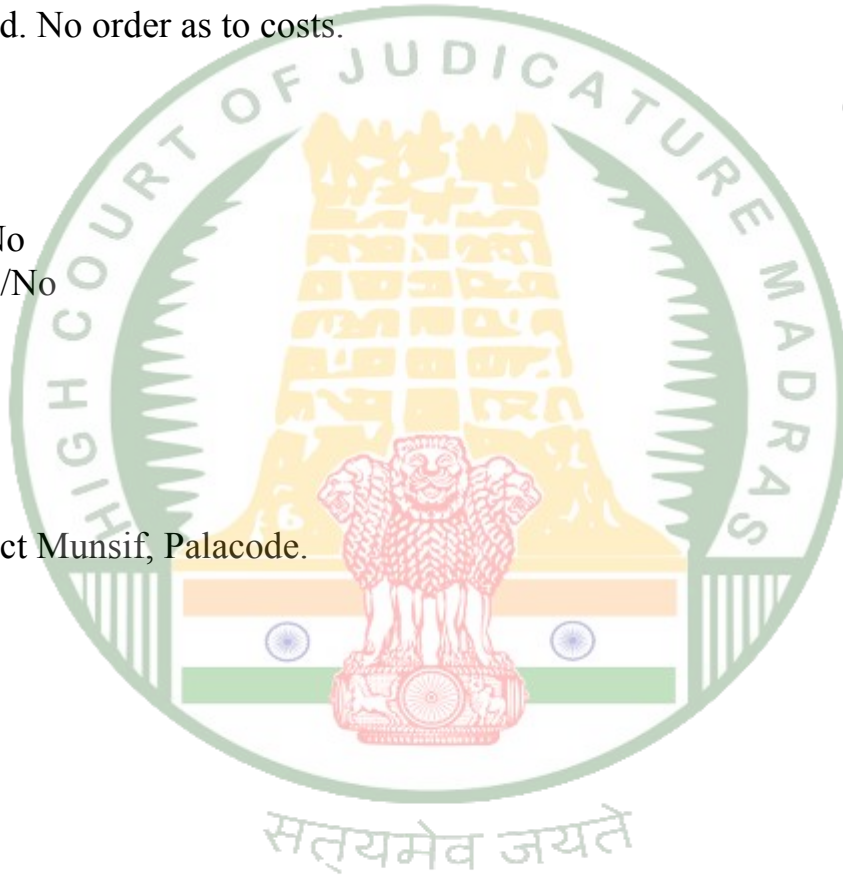
22.In view of the above, the Civil Revision Petition is allowed. The order in I.A.No.351 of 2019 dated 09.09.2019 is set aside. A direction given to the Principal District Munsif at Palacode to dispose of O.S.No.126 of 2012 on or before 31.10.2021. Consequently, the connected miscellaneous petition also stands closed. No order as to costs.

06.07.2021

Index:Yes/No
Internet:Yes/No

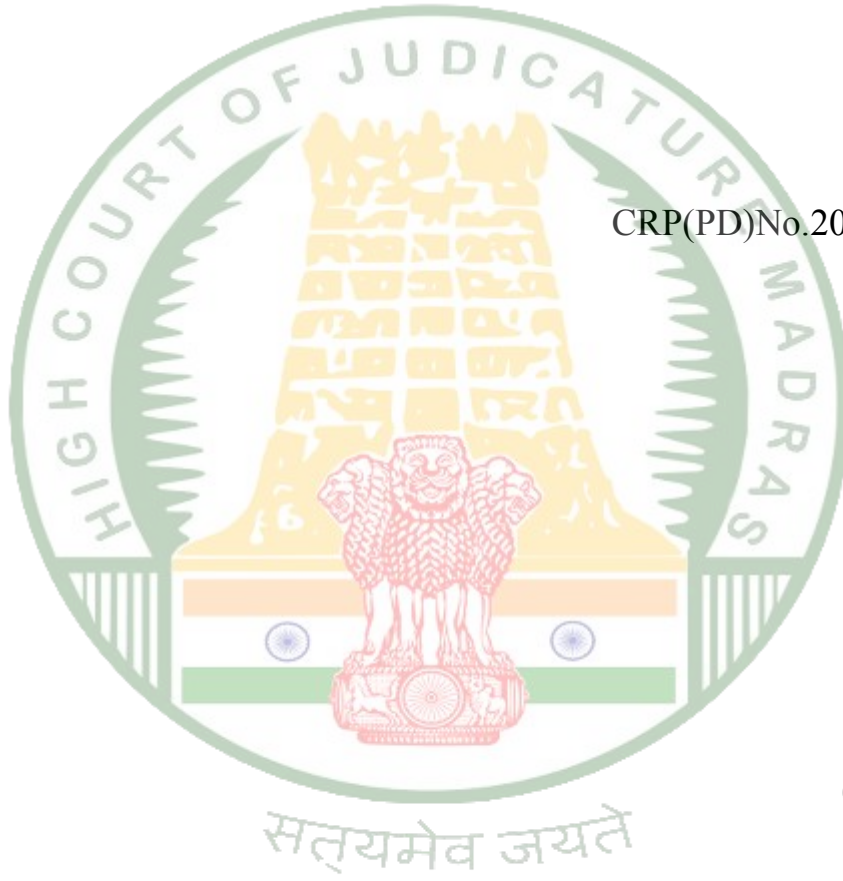
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To
1.The District Munsif, Palacode.



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C.V.KARTHIKEYAN, J.



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