

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).Nos.1189 & 1190 of 2017
and C.M.P.No.5677 of 2017

1.Ganesan
2.Saraswathi

.. Petitioners in
both C.R.Ps.

Vs.

1.Muthayammal
2.Indirani

.. Respondents
in both C.R.Ps.

Prayer in C.R.P.No.1189/2017: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 04.10.2016 made in I.A.No.202 of 2016 in O.S.No.223 of 2009, on the file of the II Additional Sub Court, Erode.

Prayer in C.R.P.No.1190/2017: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the final order dated 08.12.2016 made in Tr.O.P.No.197 of 2016 on the file of the Principal District Court, Erode.

(In both C.R.Ps.)

For Petitioners : Mr.N.Manokaran

For Respondents : No appearance

COMMON ORDER

(The matter is heard through 'video conferencing/hybrid mode')

C.R.P.No.1189 of 2017 is filed to set aside the fair and decreetal order dated 04.10.2016 made in I.A.No.202 of 2016 in O.S.No.223 of 2009, on the file of the II Additional Sub Court, Erode.

C.R.P.No.1190 of 2017 is filed to set aside the final order dated 08.12.2016 made in Tr.O.P.No.197 of 2016 on the file of the Principal District Court, Erode.

2.The issue involved in both the Civil Revision Petitions are one and the same. Hence, they are disposed of by this common order.

3.The petitioners are the defendants in O.S.No.223 of 2009. The respondents, who are the plaintiffs, filed the said suit for declaration, permanent injunction and mandatory injunction. The petitioners filed written statement and additional written statement and are contesting the suit. Trial commenced. The respondents let in their evidence and closed their side. The petitioners examined D.W.1. At that stage, the petitioners filed Tr.O.P.No.197 of 2016 before the Principal District Court, Erode, to withdraw the suit in O.S.No.223 of 2009 from the file of II Additional Sub Court, Erode and to transfer the same to some other Court, making allegations against the Presiding Officer. The Tr.O.P.No.197 of 2016 was dismissed by an impugned order dated 08.12.2016, by the learned Principal District Judge, Erode. Against that order, the petitioners filed C.R.P.No.1190 of 2017.

4.The petitioners filed I.A.No.202 of 2016 to appoint an Advocate Commissioner to note down the various physical features in and around the suit properties and to file a report with plan. According to the petitioners, while cross-examining D.W.1, some unnecessary questions

were put to by the counsel for the respondents to confuse D.W.1. The Presiding Officer observed that he will have local inspection. The petitioners filed application for local inspection. Subsequently, the petitioners withdrew the said application filed for local inspection and filed the present I.A.No.202 of 2016, for appointment of Advocate Commissioner. The learned Judge, without fully hearing the arguments of the counsel for the petitioner, in a hasty manner, dismissed the I.A., filed for appointment of Advocate Commissioner. Against the dismissal of I.A.No.202 of 2016, the petitioners have filed C.R.P.No.1189 of 2017.

5.The learned counsel for the petitioners submitted that D.W.1 is an illiterate person from a village. While cross examining him, unnecessary questions and twisted questions were put to him. In view of the same, the inspection of the Advocate Commissioner to note down the physical features in and around the suit properties is necessary. The report of the Advocate Commissioner will resolve the actual dispute between the parties. Unless factual position is clarified either by physical verification or local inspection, the learned Judge may not be in a

position to appreciate the oral and documentary evidence in its proper perspective. The learned Judge, without hearing the arguments in full, dismissed the I.A. and hence, prayed for allowing both the Civil Revision Petitions.

6.Though notice has been served on the respondents and their names are printed in the cause list, there is no representation for them either in person or through counsel.

7.Heard the learned counsel appearing for the petitioners and perused the entire materials available on record.

8.From the materials on record, it is seen that the petitioners filed Tr.O.P.No.197 of 2016 before the Principal District Judge, Erode, for withdrawing O.S.No.223 of 2009 from the file of II Additional Sub Court, Erode and to transfer the same to some other Court, on the ground that the learned Judge initially observed that he himself will make a local inspection before deciding the issue. Subsequently, he changed his mind

and directed the petitioners to file application for appointment of Advocate Commissioner. When the petitioners filed application for appointment of Advocate Commissioner, the learned Judge, without fully hearing the counsel for the petitioners, in a hasty manner, dismissed the said I.A. Due to this attitude of the learned Judge, the petitioners apprehend that they will not get justice before the same Judge. The learned Principal District Judge, Erode called for report and considered the entire materials on record and dismissed the Tr.O.P.

9.From the order of the learned Principal District Judge, Erode, it is seen that the petitioners filed Tr.O.P. on apprehension. Mere apprehension is not a ground for transfer. The learned Principal District Judge, Erode has considered the entire materials and dismissed the Tr.O.P. There is no error in the order of the learned Principal District Judge, Erode, warranting interference by this Court. In any event, the same Judge is not continuing now, as he has been transferred to other Court. For the above reason, the C.R.P.No.1190 of 2017 is liable to be dismissed.

10.As far as C.R.P.No.1189 of 2017 is concerned, the said C.R.P is filed challenging the order of the learned II Additional Subordinate Judge, Erode, dismissing I.A.No.202 of 2016, filed for appointment of the Advocate Commissioner to note down various physical features in and around the suit properties and to file a report with plan. This application is filed on the ground that while cross-examining D.W.1 who is an illiterate person coming from a village, unnecessary and twisted questions were put to him. In view of the same, the local inspection by the Advocate Commissioner to note down the various physical features in and around the suit properties is necessary. The respondents filed counter affidavit and submitted that though D.W.1 is from a village, he is a knowledgeable person and well versed in English. All the questions put forth to him were only based on the revenue records. The reason given by the petitioners for appointment of an Advocate Commissioner, due to questions put to him during cross-examination, is not a valid ground for appointment of an Advocate Commissioner, especially to note down the physical features in and around the suit property. The learned II

Additional Subordinate Judge, Erode has considered all the materials placed before him and dismissed I.A.No.202 of 2016 by giving cogent and valid reason. There is no error, warranting interference by this Court and hence, C.R.P.No.1189 of 2017 is liable to be dismissed.

Accordingly, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

16.08.2021

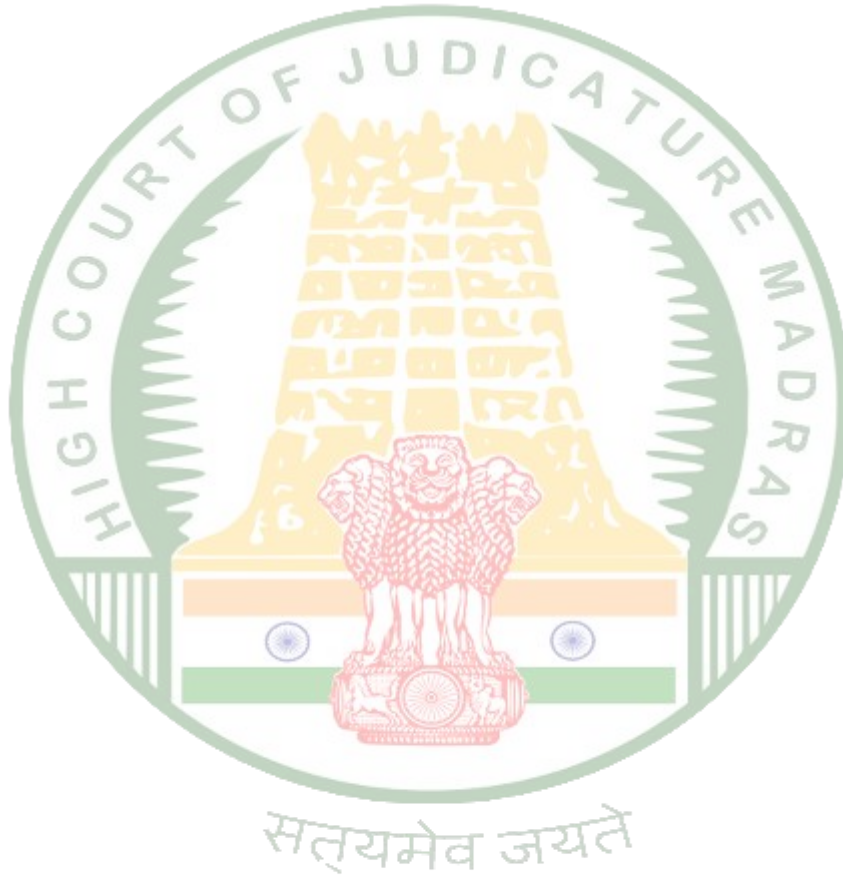
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To

1.The II Additional Subordinate Judge,
Erode.

2.The Principal District Judge,
Erode.

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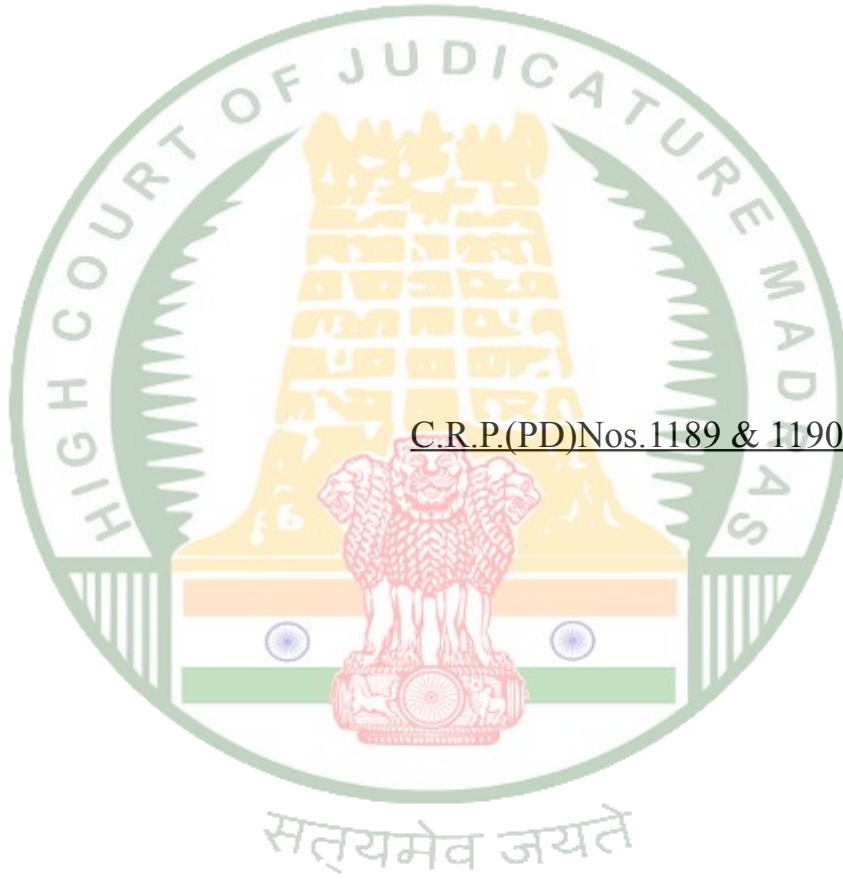


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V.M.VELUMANI, J.

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