

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (PD) No.3439 of 2019
and
C.M.P.No.22585 of 2019

1.P.S.Velusamy
2.N.Sarojini
3.N.Gunasekaran
4.B.Sakthivel

... Petitioners/Petitioners/Defendants

Vs

Chokkalingam

..Respondent/Respondent/Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order dated 06.09.2019 made in I.A.No.2 of 2019 in O.S.No.102 of 2018 on the file of the Court in I Additional District Munsif, Erode.

For Petitioners

..

Mr.C.E.Pratap

For Respondent

..

Mr.S.Kaithamalai Kumaran

ORDER

The defendants in O.S.No.102 of 2018 are the revision petitioners herein. They are aggrieved by the order passed in I.A.No.2 of 2019 which application had preferred in the Suit seeking appointment of an Advocate Commissioner under Order XXVI Rule 9 of CPC. The suit is now pending on the file of the I Additional District Munsif Court, Erode.

2.Evidence of PW-1 has been recorded. The witness has been cross-examined and as a matter of fact a statement made in the cross-examination had given rise to the filing in I.A.No.2 of 2019 for appointment of an Advocate Commissioner.

3.The facts of the case indicate that the suit in O.S.No.102 of 2018 had been filed for permanent injunction. The plaintiff and the defendants are neighbors. Defendants are in the southern side of the plaintiff's property. There was a channel in between. Thereafter, Land Acquisition Proceedings came to be initiated, but the said proceedings were dropped so far as the petitioner's property was concerned.

4.There was an allegation that the plaintiff attempted to encroach

<http://www.judis.nic.in> after the channel. This prompted the defendants to put up gate. This

caused further problems. Naturally, disputes arose. Let me not go further into the facts, since the trial in progress and requirement of putting up gate and requirement for putting up a wall are the issues to be decided during trial.

5. Be that as it may, the suit came to be filed claiming that the revision petitioners herein / defendants in the suit had attempted to encroach into the property of the plaintiff in the suit. The plaintiff had given the schedule and the boundaries of the properties. The burden would lie on the plaintiff to prove interference with possession and to establish necessity for protection of possession.

6. Written statement was also filed. During cross-examination of PW-1, he stated that there is a dispute with respect to the boundaries and it would also require a Taluk Surveyor to be appointed. Taking a hint from such statement during cross-examination, the defendants had filed the present application seeking appointment of an Advocate Commissioner to measure and note down the physical features and to discharge work as stated in the petition. That application came to be dismissed by the learned Judge.

7.The learned Judge observed that in a suit for permanent injunction, the burden lies on the plaintiff to establish that there was an attempt to interfere with the peaceful possession of the plaintiff and that the defendants had no such right to interfere with the peaceful possession of the plaintiff. It was observed that in such a suit, the scope is limited to determine possession. The appointment of an Advocate Commissioner would not advance the case of either the plaintiff or the defendants.

8.Let me not dwell further into facts. Let a direction to be issued to the learned I Additional District Munsif, Erode to proceed further with the trial and give a quietus so far as the issues raised in the suit are concerned. The parties may workout their remedies in manner known to law or otherwise.

9.Therefore, the follow the directions are given:-

The learned I Additional District Munsif, Erode, may invite the plaintiff and the defendants to participate further in the trial proceedings and during the course of recording evidence if adjournments are sought the learned Judge may grant a maximum number of three working days in between two adjournments and it is hoped that the plaintiff and the

defendants would adduce evidence and also submit such evidence for cross-examination. If the grant of adjournments are controlled in the above manner, the trial will be completed within a reasonable period of time.

10. Without knowing the pendency of the Court, it would be inappropriate on my part to fix an outer time limit. But I can call upon the I Additional District Munsif, Erode, to control the adjournments in the above manner.

11. With the above observations, the Civil Revision Petition is disposed of. No order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

21.04.2021

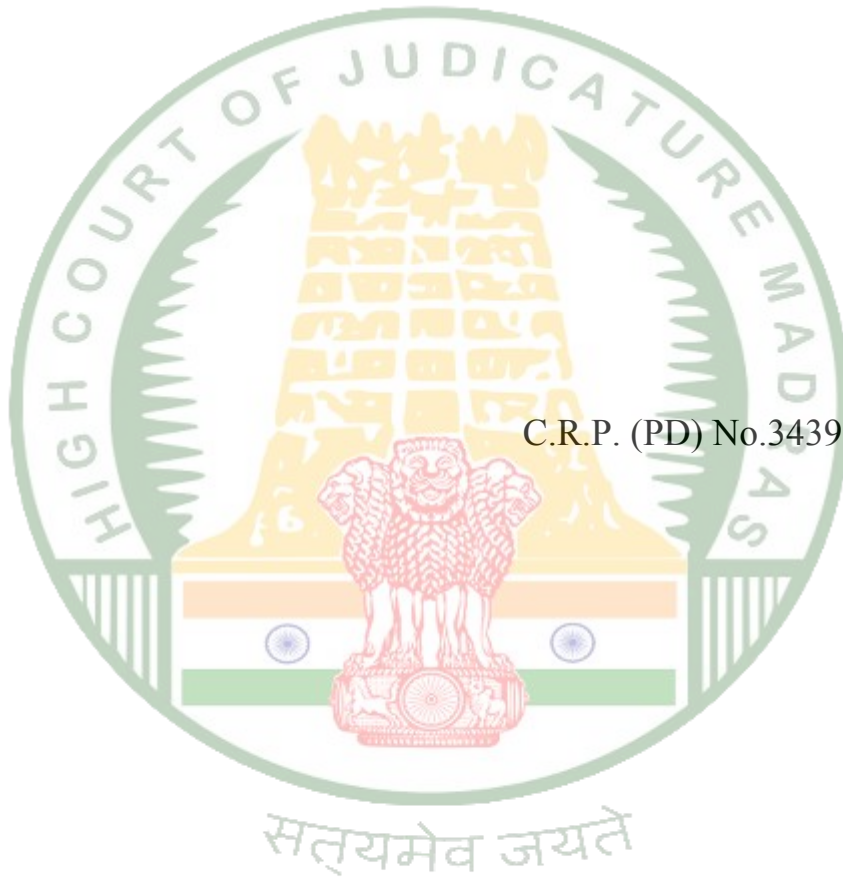
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To
The I Additional District Munsif Court,
Erode.

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C.V.KARTHIKEYAN,J.

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