

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

**CRP (PD).No.4039 of 2018
and
CMP.No.22337 of 2018**

Sakthivel

... Petitioner

Vs.

1. Jeevan Evans

2. State of Tamil Nadu
Rep.by the District Collector,
Collectorate Office,
Tiruppur,
Tiruppur District.

3. The Block Development Officer,
Village Panchayat,
Dharapuram Panchayat Union,
Dharapuram,
Tiruppur District.

4. The President,
Manakadavu Panchayat,
Manakadavu Village,
Tiruppur District.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 23.10.2018 made in I.A.No.207 of 2017 in O.S.No.203 of 2015 on the file of the learned District Munsif, Dharapuram by allowing this Civil Revision Petition.

For Petitioner : Mr.Ponraj N.

For Respondents : No Appearance (for R-1)

: Mr.Edwin Prabakar

Government Advocate (CS) (for R-2)

: Mr.D.Suryanarayanan (for R-3)

: Not Ready in Notice

(No Appearance) for R-4

ORDER

This Civil Revision Petition is filed as against the fair and decretal order passed in I.A.No.207 of 2017 in O.S.No.203 of 2015 dated 23.10.2018 on the file of the learned District Munsif, Dharapuram, thereby dismissing the petition seeking appointment of Advocate Commissioner.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit for declaration and mandatory injunction in respect of suit schedule property. While pending the suit, the petitioner filed a petition seeking appointment of Advocate Commissioner

to measure the suit property with the assistance of the Taluk surveyor and to fix the boundary stones in 'A' schedule property and to file a report and plan. The case of the petitioner is that 'A' schedule property belongs to him and he constructed house. The petition mentioned 'B' schedule property is the vacant site and form part of the 'A' schedule property. The first respondent with intention to grab the petition property, trespassed into 'B' schedule property and constructed a building thereon by getting financial assistance from the Government under the India Memorial Housing Scheme by misrepresenting to the respondents 2 to 4 herein. Therefore, if the property is measured in accordance with the document of the petitioner, it would be useful for the Court below to decide the issue of encroachment allegedly made by the first respondent herein. However, the Court below dismissed the petition seeking appointment of Advocate Commissioner for the reason that the suit has been filed for declaration and mandatory injunction and it is for the plaintiff to prove his case through his own evidence and he could not take aid of the report of the Surveyor to prove his case.

3. Though notice was served on the first respondent, no one appeared on behalf of the first respondent through counsel or person.

4. Heard the learned counsel for the petitioner and the learned Government Advocate (CS) appearing for the second respondent and the learned counsel appearing for the third respondent.

4. In the case of mandatory injunction that too with the allegations that the part of the suit property was encroached by the first respondent herein, it is useful for the Court below to decide the issue by appointing the Advocate Commissioner to measure the same with the help of Surveyor.

5. In view of the above discussion, this Civil Revision Petition is allowed and the order passed in I.A.No.207 of 2017 in O.S.No.203 of 2015 dated 23.10.2018 is hereby set aside. Consequently, the connected Miscellaneous Petition is closed. No costs.

22.07.2021

Speaking/Non-speaking order

Index : Yes/No

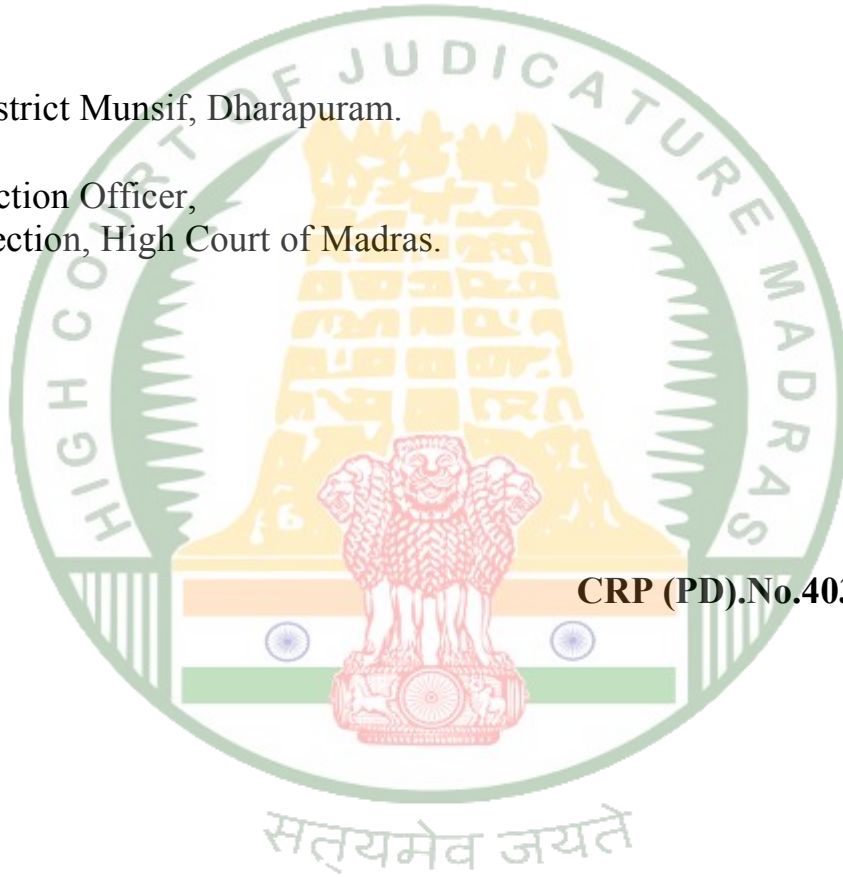
kv

G.K.ILANTHIRAIYAN,J.

kv

To

1. The District Munsif, Dharapuram.
2. The Section Officer,
V.R. Section, High Court of Madras.



CRP (PD).No.4039 of 2018

WEB COPY

22.07.2021



WEB COPY