

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

**C.R.P.(PD) No. 4322 of 2018
and CMP No.23658 of 2018**

Datchinamoorthy Petitioner
Vs
1.Sivakumar
2.Sasikumar Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 07.09.2018 made in I.A.No.213 of 2018 in O.S.No.132 of 2017 on the file of the Subordinate Judge, Neyveli.

For Petitioner : M/s.C.Jaya Chithra
For Respondents : Mr.V.Sundar Raman
for Mr.G.Viajaykumar

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 07.09.2018 made in I.A.No.213 of 2018 in O.S.No.132 of 2017 on the file of the Subordinate Judge, Neyveli, thereby allowing the petition for appointment of Advocate Commissioner.

2. The petitioner is the plaintiff and the respondents are the

defendants. The petitioner filed a suit for declaration and permanent injunction in respect of the suit property. While pending the suit, the respondents filed a petition for appointment of Advocate Commissioner to inspect the suit property and to survey and measure the property belongs to the respondents with the help of Surveyor and to file a report.

3. The case of the petitioner is that the property comprised in old Survey No.417/16 and new Survey No.257/7b owned by the petitioner and he was in possession and enjoyment of the same. While being so, the respondents were attempting to trespass into the suit property and hence the suit.

4. Whereas, the case of the respondents is that the land situated in southern side of the suit property is owned by them and in possession and enjoyment of the same. They have already reserved their right for their counter claim of adverse possession in respect of the suit property on receipt of report of the Advocate Commissioner. Therefore, the respondents herein filed a petition for appointment of Advocate Commissioner only to collect the evidence to file their counter claim.

5. That apart, the petitioner is the plaintiff and he filed a suit for

declaration and injunction and as such the entire burden of the case has to be proved before the Trial Court. The appointment of Advocate Commissioner does not arise in the present suit and it would amount to collection of evidence by the respondents.

6. In view of the above, the order dated 07.09.2018 passed by the Subordinate Judge, Neyveli in I.A.No.213 of 2018 in O.S.No.132 of 2017 is hereby set aside and the Civil Revision Petition is allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

24.06.2021

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

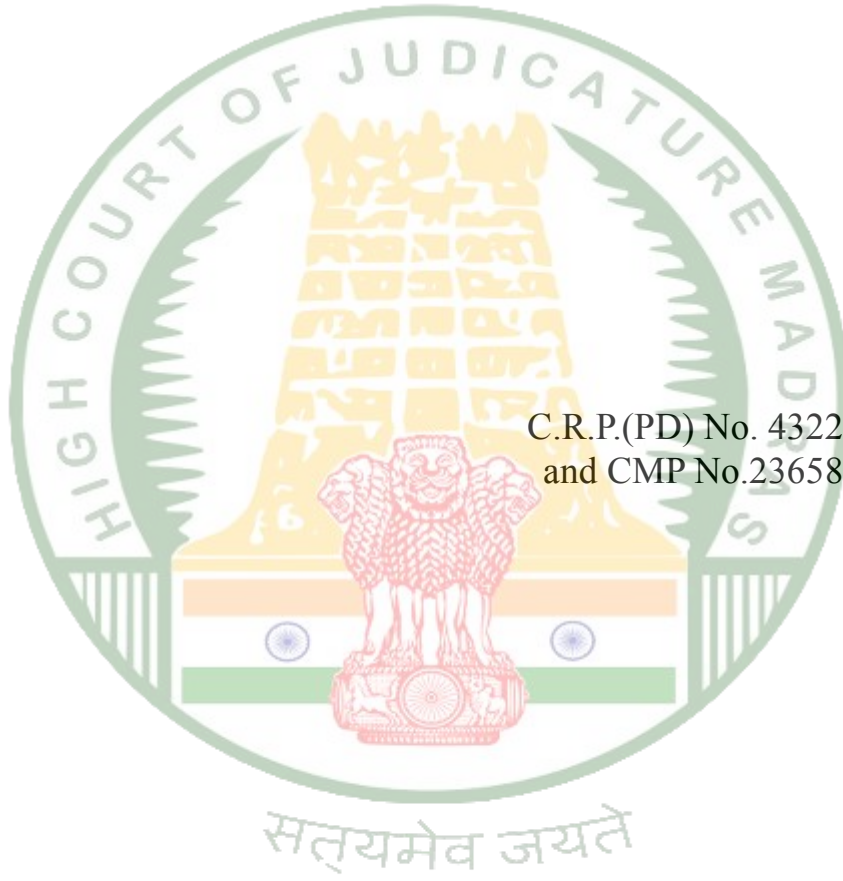
To
The Sub Judge,
Neyveli.

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C.R.P.(P.D).No.4322 of 2018

G.K.ILANTHIRAIYAN.J,

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