

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2021

CORAM

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

C.R.P.(PD)No.4246 of 2018
and C.M.P.No.23299 of 2018

1. A.H.Mohamed Farook
2. S.Sugumar
3. Saritha

... Petitioners

Vs.

1. Mohammed Sabeer
2. Naziya Begum
3. The Sub Registrar
Vanur.

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the docket order dated 07.09.2018 made in I.A.No.359 of 2018 in O.S.No.107 of 2018 on the file of the learned District Munsif, Vanur.

For Petitioners : Mr.C.A.Diwakar

For Respondents

For R1 & R2 : Mr.D.R.Arun Kumar

For R3 : Dr.S.Suriya

Government Advocate (CS)

ORDER

The Civil Revision Petition is directed as against the order dated 07.09.2018 passed by the learned District Munsif, Vanur, in I.A.No.359 of 2018 in O.S.No.107 of 2018, thereby allowing the petition seeking appointment of advocate Commissioner.

2. The petitioner are the defendants 1, 2 & 4 and the first respondent is the plaintiff. The first respondent filed suit in O.S.No.107 of 2018 for mandatory injunction to remove the encroachment made in the suit property to an extent of 20ft. X 48ft., and also for permanent injunction. Along with the suit, the first respondent filed two petitions seeking appointment of advocate commissioner to note down the encroached portion and also for interim injunction. The Court below ordered notice in the interim injunction petition and allowed the petition for appointment of advocate commissioner to inspect and survey the suit property along with the help of Surveyor and submit the report. Aggrieved by the said order, the petitioners filed this present Civil Revision Petition.

3. The learned counsel appearing for the petitioners would submit that the Court below ordered notice in the interim injunction application and allowed the application for seeking advocate commissioner, with even ordering notice and without even giving opportunity to file counter. There is absolutely no urgency, since the case of the first respondent is that some portion of the property encroached. Therefore there is no urgency to appoint an advocate commissioner immediately after filing the suit property. Hence to prayed to allow this Civil Revision petition.

4. A perusal of the plaint revealed that, the first respondent specifically averred that the petitioners encroached the portion which is marked as ABCD to an extent of east to west 20 feet and south to north about 48 feet illegally. They also planted seven coconut trees and seven mango trees and also three small guava saplings and put up fencing around it. According to the first respondent, it is a public pathway and as such there is urgency to inspect the suit property. Therefore, the Court below rightly allowed the petition without ordering notice and appointed

an Advocate Commissioner to inspect the suit property to note down the physical feature and to survey the suit property with the help of the Surveyor and to submit the report. This Court finds no infirmity or illegality in the order passed by the Court below.

5. Accordingly, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

16.07.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

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To

1. The District Munsif,
Vanur.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

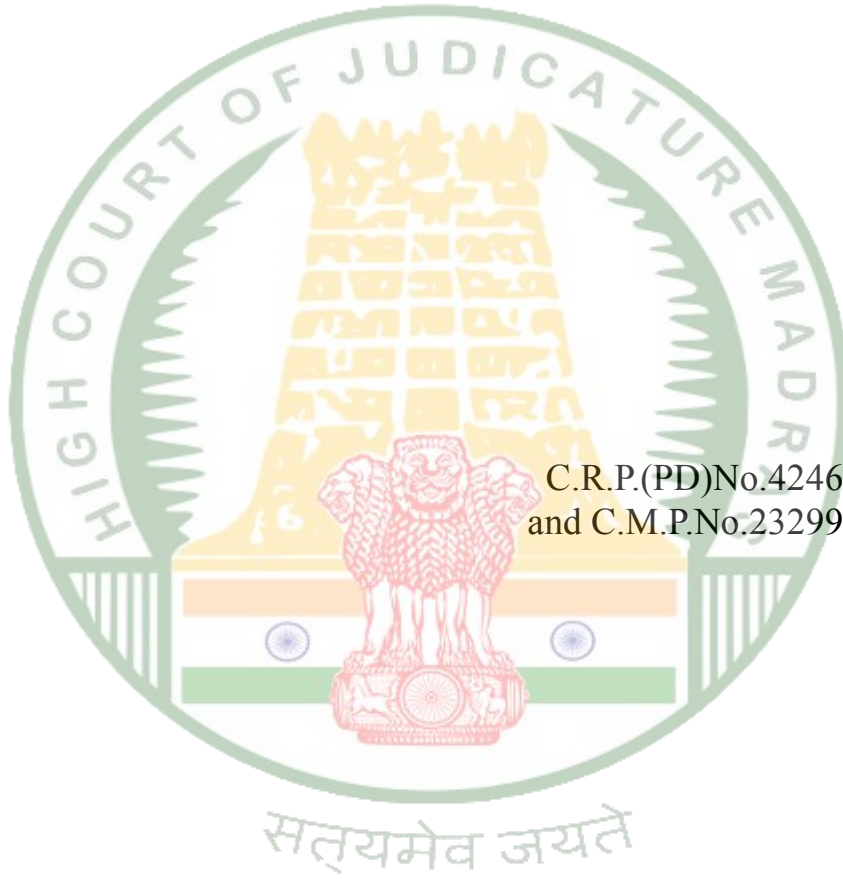


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G.K.ILANTHIRAIYAN, J.

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