

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2015

CORAM :

THE HONOURABLE Mr.JUSTICE D.HARI PARANTHAMAN

C.R.P.(PD).No.3230 of 2015

and

M.P.No.1 of 2015

- 1.Arukutty @ Arumugham
- 2.Balraj
- 3.Vijayakumar
- 4.Rasamani
- 5.Shanmughasundaram
- 6.Ramathal
- 7.Vasanthamani
- 8.Kanagaraaj

.... Petitioner/respondent 1 to 8
/defendant 1 to 8

Vs.

- 1.T.Ramasamy
- 2.Shanthamani
- 3.Minor Priyadharshini
- 4.Minor Guruprasath

(R3 & R4 are rep by their mother and
natural guardian Tmt.Shanthamani)

.. Respondents/Petitioner &
Respondents 9 to 11/
Plaintiff & Defendants 9 to 11

Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India against the order dated 24.06.2015 made in I.A.No.205 of 2015 in O.S.No.76 of 2015 on the file of the learned District Munsif Court, Palladam.

For Petitioners : Mr.P.M.Duraiswamy
For Respondents : Mr.Surendran (For R1)

ORDER

The revision petitioners herein are the defendants 1 to 8 in the suit in O.S.No.76 of 2015 pending on the file of the learned District Munsif Court, Palladam. The 1st respondent herein/Plaintiff filed the said suit for declaration and permanent injunction.

2.In the said suit, the 1st respondent herein/plaintiff filed an Interlocutory Application in I.A.No.205 of 2015 under Order XXVI Rule 9 & Section 151 of CPC, seeking for appointment of an Advocate Commissioner to note down the physical features in and around the suit schedule properties and to measure the same with the assistance of the Taluk Surveyor and to file a detailed report and plan. The

said Interlocutory Application was ordered exparte by the Court below on 24.06.2015. The order passed by the Court below reads as follows:-

"Heard. Records perused. On considering the facts Mr.S.Arunkumar, B.A., B.L., Advocate is appointed as a commissioner to note down the physical features in and around the suit properties and to measure the same with the assistance of the Taluk surveyor after giving due notice to the both parties. The Advocate Commissioner fee is fixed at Rs.4,000/- and the same to be paid by the petitioner directly. Commissioner Report & plan by 08.07.2015."

3.Heard both sides and perused the materials available on record.

4.In my considered view, there is no bar for the Trial Court to appoint an Advocate Commissioner, taking into account the facts and circumstances of the case, even without hearing the defendants, if situation warrants so. Further more, in this case, the learned counsel for the 1st respondent/plaintiff has submitted that so far, the Advocate Commissioner has not carried out his work due to the obstruction made by the revision petitioners/defendants. This Court is of the view that no prejudice would be caused if the Advocate Commissioner inspects the suit schedule properties, with the assistance of Taluk Surveyor, in the presence of both the parties and their respective counsel. Hence, I am not inclined to interfere with the impugned order passed by the Trial Court. The revision petitioners as well as the respondents could be present at the time of inspection of the Advocate Commissioner. The Advocate Commissioner is directed to give prior notice to both parties about the inspection and file a report, after inspection, as directed by the Trial Court.

With the above terms, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

SSV

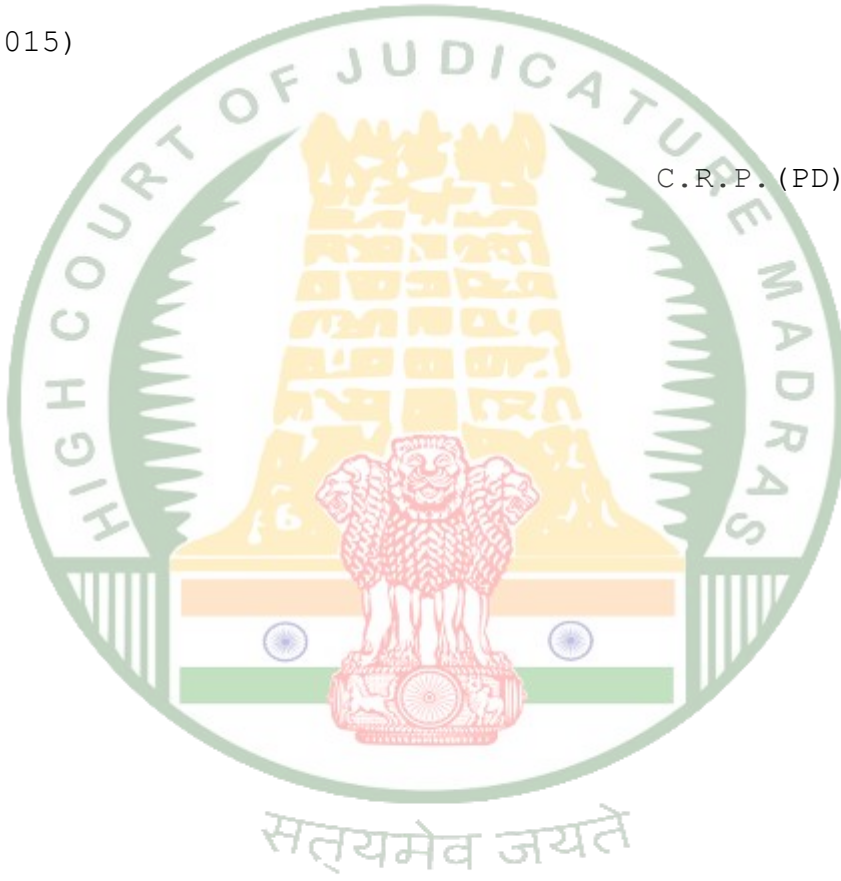
To

1.The District Munsif, Palladam.

+1cc to Mr.P.M. Duraiswamy, Advocate, S.R.No.42200
+1cc to Mr.V.P. Sengottuvel, Advocate, S.R.No.42205

GGK (CO)
EU (21/09/2015)

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