

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD) NO.2131 OF 2017

D.Krishnamoorthy

... Petitioner

Vs.

1.D.Jayakumar
2.D.Ravichandran
3.Susirita
4.Banu
5.Anuradha

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 12.04.2017 passed in I.A.No.389 of 2016 in O.S.No.199 of 2016 on the file of the Subordinate Judge, Poonamallee.

For Petitioner : Ms.K.Jayakarthisa

WEB COPY
ORDER

This Civil Revision Petition is directed against the dismissal of the petition filed under Order XXIV Rule 9 of the Civil Procedure Code to appoint an Advocate Commissioner to note down the physical features and nature and stage of constructions in suit properties and to

file report with plan.

2. The suit is one for partition, declaration and injunction against the respondents. In a partition suit, entitlement of share of each parties has to be determined first and a preliminary decree has to be passed. Thereafter, an Advocate Commissioner would be appointed to divide the properties by metes and bounds. Whereas, the present suit is filed for partition as well as declaration and injunction. The petition seeking appointment of Advocate Commissioner appears to have been filed for collecting evidence against the parties. The Trial Court has rightly considered the fact that no reason has been assigned for noting down the physical features and the stage of constructions in the affidavit filed in support of the petition. Further, the Trial Court has come to a correct conclusion that it was filed with an intention to collect evidence, as contended by the respondents. I do not find any discrepancy in the order passed by the Trial Court.

3. In a partition suit, as stated supra, an Advocate Commissioner can be appointed, while passing final decree and not before deciding the entitlement of the shareholders. Any appointment

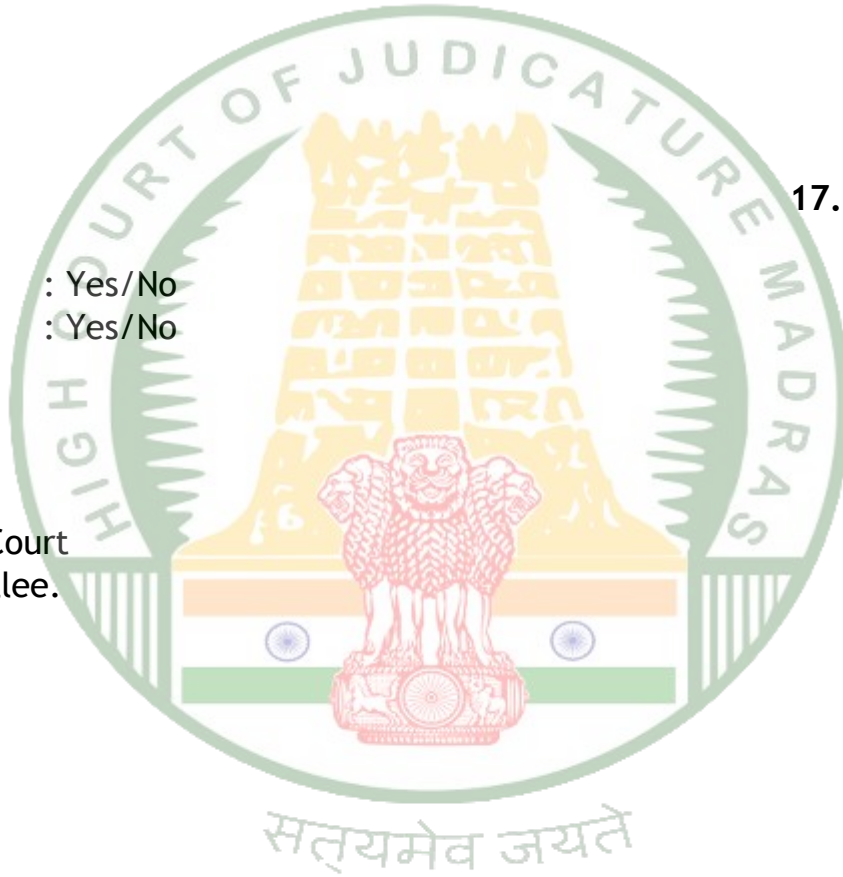
of Advocate Commissioner will definitely result in collection of evidence and therefore, such appointment shall not be made for collecting evidence and therefore, the Civil Revision Petition merits no consideration. Accordingly, the Civil Revision Petition stands dismissed. No costs.

17.07.2017

Index : Yes/No
Internet : Yes/No
TK

To

The Sub Court
Poonamallee.



WEB COPY

M.GOVINDARAJ, J.

TK



C.R.P.(PD) NO.2131 OF 2017

WEB COPY

17.07.2017