

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P.(NPD) No.2350 of 2017

and

C.M.P.No.11071 of 2017

and

C.R.P.(NPD) No.2351 of 2017

1.Kannapan
2.Devaraja @ Rajagopal

.. Petitioners
in both CRPs

Vs

Putalyee (died)

1. Subramaniam
2. Jayalakshmi
3. Anbazhagan
4. Kamalakanan
5. Amurthalingam

.. Respondents
in both CRPs

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PRAYER in both CRPs: These Civil Revision Petitions filed under Article 227 of the Constitution of India, against the Order and Decreetal Orders dated 15.02.2017 in I.A.Nos.1691 & 1692 of 2016 in O.S.No.399 of 1996 on the file of the Principal District Munsif, Puducherry.

For Petitioners : Mr.Siddharth
in both CRPs for Mrs.P.Veena Suresh

For Respondents 1 to 4 : No Appearance
in both CRPs

For 5th Respondent : Mr.D.Ravichander
in both CRPs

ORDER

These revision petitions arise against the Orders and Decretal Orders dated 15.02.2017 in I.A.Nos.1691 & 1692 of 2016 in O.S.No.399 of 1996 on the file of the Principal District Munsif, Puducherry.

2. The revision petitioners filed a suit in O.S. No.399 of 1996 for the relief of declaration and recovery of possession. In the aforesaid suit, the petitioners filed Interlocutory Applications in I.A. No. 1691/2016 to condone the delay in filing the list of witness and I.A. No. 1692/2016 to issue summons to the witnesses mentioned in the list and permit the petitioners to examine them as witnesses. Challenging the judgement and decree passed by the trial court in the suit, on 29.10.1999 the

petitioners preferred appeal in A.S. No. 61 of 2000 before the II Additional District Judge, Puducherry. The appeal suit was allowed and the matter was remanded to the trial court for fresh consideration. Based on the direction, an Advocate Commissioner was appointed to measure the suit property and the relevant items of the properties specified in Ex.A2, with a help of a qualified surveyor. Pursuant to the judgement of the Appellate Court, an Advocate Commissioner was appointed along with a Surveyor and report was submitted in the year 2004. Thereafter, an additional report was submitted by the Advocate Commissioner on 22.01.2013. The trial commenced and posted for cross examination for PW2. At this stage, the present application was filed in I.A. No. 1691 and 1692 of 2016, seeking the aforesaid prayer. Counter affidavit has been filed in the said applications by the respondents. The court below dismissed the applications. Challenging the said order, these revision petitions have been filed before this Court.

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3. According to the learned counsel for the petitioners, the court below without appreciating the case of the petitioner has dismissed the applications, on the ground that the suit was filed in the year 1996

and the present applications have been filed after 20 years. Further, it has been stated by the court below that there is no necessity to examine the Advocate Commissioner and the surveyor, with regard to the report and identification of property.

4. The learned counsel for the respondents would submit that the present applications have been filed belatedly and therefore the trial court has rightly dismissed the said application. According to the respondents, the evidence on both sides has been concluded and so there is no warrant to interfere with the order of the court below.

5. At the time of hearing, the learned counsel for the petitioners filed a memo dated 06.12.2017, stating that though the petitioners have furnished a list of witnesses, along with the application to be examined as witnesses in the said suit, he has restricted the list only to examine the Advocate Commissioner and the Deputy Surveyor who identified the plaint schedule mentioned property and the boundaries. On perusal of the affidavit filed by the petitioners along with the application, the petitioners have not specifically stated the

reasons for issuance of summons to the witnesses and the surveyor. However, as the identification of the properties itself is disputed, the surveyor has to be examined so as to elucidate before the court below to determine the details. The learned counsel for the respondents would submit that the petitioners have not specifically stated the reasons in the affidavit and therefore the said prayer of the petitioners cannot be entertained.

6. Taking into consideration the facts of the case and to determine the real issues in the said suit, as per the memo filed before this Court, the petitioners have to be permitted to examine the Advocate Commissioner as a witness in the said suit. The respondents cannot have serious objection to examine the Advocate Commissioner.

7. In view of the above, the order dated 15.02.2017 passed by the court below in I.A.Nos.1691 & 1692 of 2016 in O.S.No.399 of 1996 is set aside. The Civil Revision Petition is partly allowed, only to the extent of examination of witnesses and issue summons to the Advocate Commissioner, as a witness in the suit. On instructions both the parties,

undertake to cooperate for early disposal of the suit. The trial court shall dispose of the suit, within a period of three months from the date of receipt of a copy of this order. At this stage, learned counsel for the petitioners seek permission of this Court to cross examine PW-1. It is open to the petitioner to file appropriate application, if it is permissible under law.

8. Both the Civil Revision Petitions are partly allowed, with the above directions. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

06.12.2017

Index : Yes/ No

Speaking order/ Non speaking order

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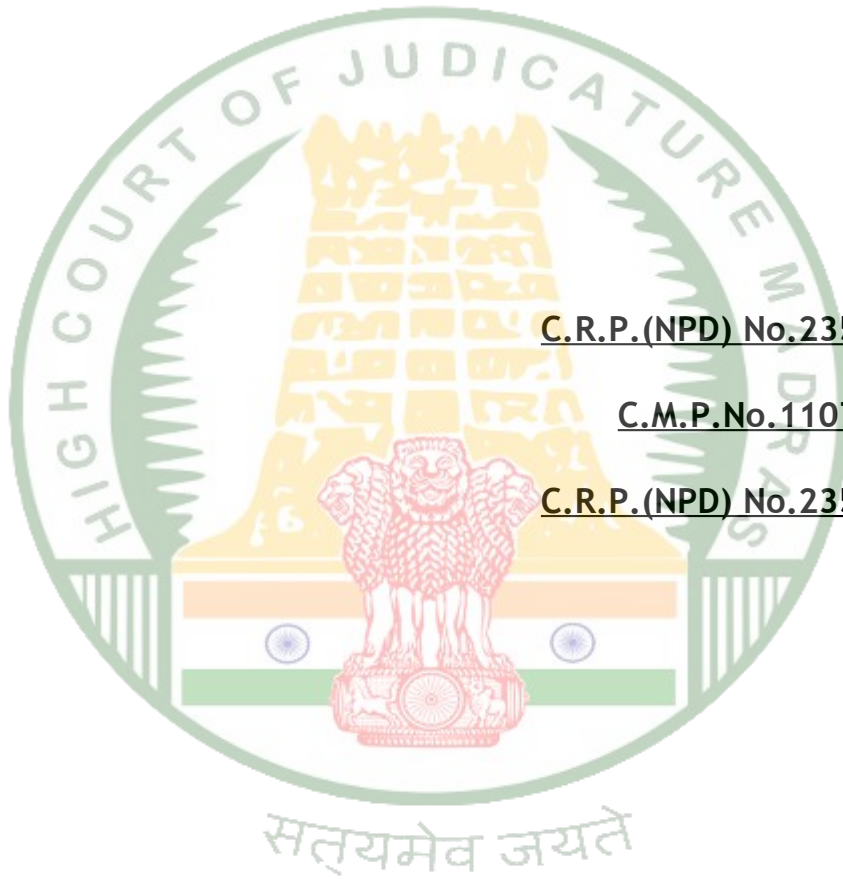
To

The Principal District Munsif,
Puducherry.

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D. KRISHNAKUMAR J.,

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