

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2017

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.267 & 268 of 2014
and MP.No.1 of 2014 in CRP (PD) No.267 of 2014

1.R.Thiruvengadam

2.Thamaraiselvi

.. Petitioner in both CRPs

Vs.

P.Kothandapani

.. Respondent in both CRPs

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order dated 20.11.2013 made in I.A.No.19 of 2012 in O.S.No.14 of 2010 and I.A.No.18 of 2012 in O.S.No.14 of 2010 respectively on the file of the Principal District Munsif Court, Thirukovilur.

For Petitioner : Mr.G.Arul Murugan
For Respondent : Mr.J.Ramakrishnan

COMMON ORDER

Both the issues involved in the revision petitions are one and the same. They are disposed of by this common order.

2. These Civil Revision Petitions are filed against the fair and decretal order dated 20.11.2013 made in I.A.No.19 of 2012 and I.A.No.18 of 2012 in O.S.No.14 of 2010 respectively on the file of the Principal District Munsif Court, Thirukovilur.

3. The petitioners are the defendants and respondent is the plaintiff in the suit in O.S.No.14 of 2010 on the file of the Principal District Munsif Court, Thirukovilur. The respondent filed the said suit for declaration and permanent injunction. The petitioners filed written statement and are contesting the suit. The respondent filed application in I.A.No.73 of 2010 for appointment of an Advocate Commissioner. Accordingly, the Commissioner was appointed and he inspected the suit property and measure the same with the help of the Surveyor and the Village Administrative Officer, and filed his report along with rough sketch of the map on 01.11.2010. The petitioners filed their objection on 15.11.2010 stating that the report submitted by the Commissioner is not correct. The suit was then posted for trial. Thereafter, when the suit was posted for evidence on behalf of the respondent, the petitioners filed two applications in I.A.No.18 of 2012 in O.S.No.14 of 2010, to scrap the report, and I.A.No.19 of 2012, for re-issue of warrant. According to the petitioners, the Advocate Commissioner has not properly measured the property and the report filed by the Commissioner is not correct.

4. The respondent filed counter and submitted that the Advocate Commissioner has properly exercised the warrant issued to him and filed his report. It is contended by the respondent that the petitioners have filed their objections on 15.11.2010, and after commencement of trial, the petitioners have filed the two applications only with an intention to drag on the proceedings. Hence, he prayed for dismissal of the said applications.

5. The learned Judge, vide his order dated 20.11.2013, dismissed the applications I.A.No.19 of 2012 and I.A.No.18 of 2012 in O.S.No.14 of 2010, holding that the Commissioner, with the help of the Surveyor, and with the aid of the Revenue Records, had measured the suit property in the presence of the parties and their counsels, and submitted his report and sketch. Hence, there is no error in the report submitted by the Advocate Commissioner. In such circumstances, the petitioners, filing applications to scrap the report of the Advocate Commissioner and to re-issue warrant to the Commissioner to inspect the suit property again, does not arise and it proves the intention of the petitioners to drag on the proceedings.

6. Against the said order of dismissal dated 20.11.2013, the petitioners have filed the civil revision petitions.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. From the records, it is seen that the Advocate Commissioner issued notice to the parties concerned and visited the suit properties on 17.7.2010, inspected and measured the property with the help of the Surveyor and Village Administrative Officer, in the presence of the parties, their counsels and certain villagers. The Commissioner filed his report on 01.11.2010. The petitioners filed objections to the report submitted by the Commissioner on 15.11.2010. After a lapse of more than one year and that too, at the time of commencement of trial, the petitioners had filed two applications in I.A.Nos. I.A.No.19 of 2012 and I.A.No.18 of 2012 on 12.12.2011. The report of the Advocate Commissioner is not the final thing to decide the issue in the suit. It is only to assist the Court in arriving at a correct conclusion. The

parties have the right to object the report as well as to examine the Advocate Commissioner. In the present case, the petitioners have already filed their objections on 15.11.2010, and now filing these applications to scrap the report of the Advocate Commissioner and to re-issue fresh warrant to the Commissioner to note down the physical features of the suit property and submit a detailed report along with survey plan, proves only the attitude of the petitioners is to drag on the proceedings and to cause loss to the respondent. The learned Judge, considering all these facts and also taking into consideration the stage of the suit, has rightly dismissed the applications in I.A.Nos.18 and 19 of 2010.

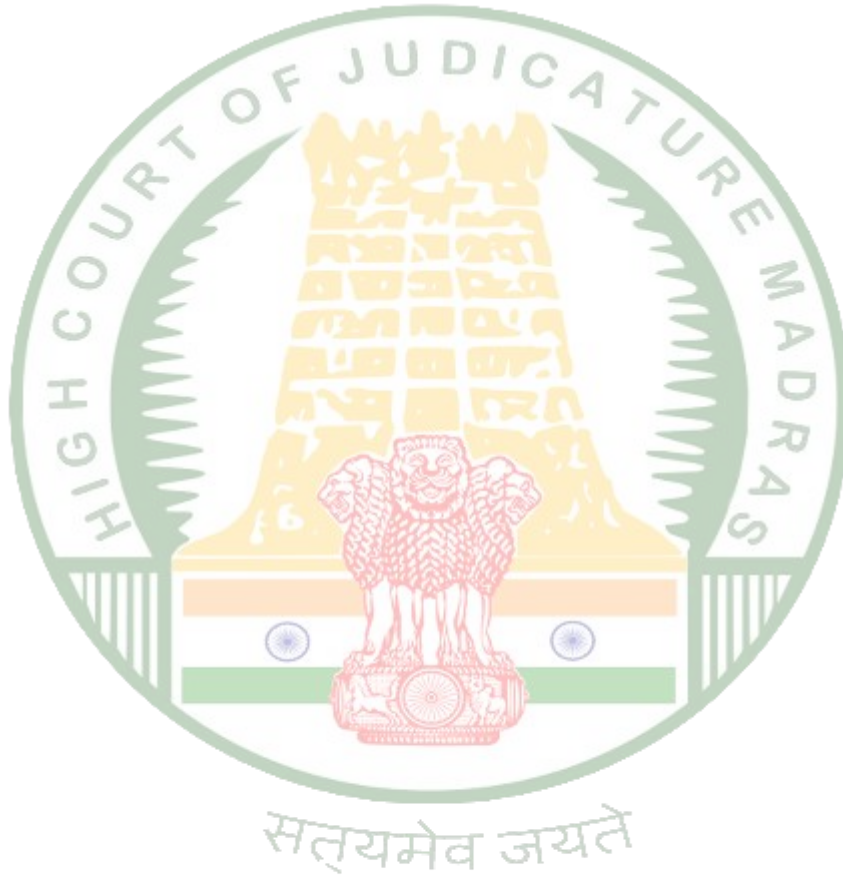
9. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

19.06.2017

Speaking order/Non-speaking order
Index : Yes
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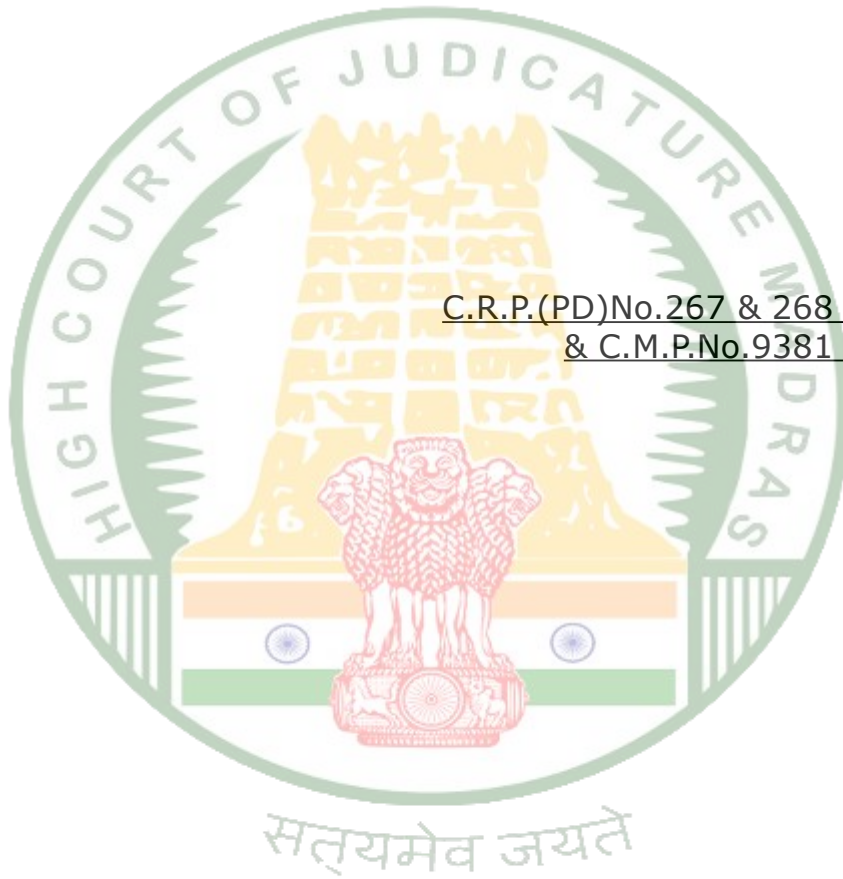
To:

The Sub Judge
Tiruttani.



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V.M.VELUMANI, J.
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