

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD) No.4689 of 2017

and

C.M.P.No.22055 of 2017

1.Udhya Shankar

2.Senthil Kumar

.. Petitioners

Vs

1.Kuppusamy Gounder

2.Selvakumarasamy

3.Somasundharam

4.Marudhachalam

.. Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 08.09.2017 made in I.A.No.746 of 2016 in O.S.No.1469 of 2016 on the file of the II Additional District Munsif of Coimbatore.

For Petitioners

:Mr.B.Kumarasamy

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ORDER

This Civil Revision Petition is filed against the dismissal order dated 08.09.2017 made in I.A.No.746 of 2016 in O.S.No.1469 of 2016 on the file of the II Additional District Munsif of Coimbatore.

2. The learned counsel for the revision petitioners would submit that the revision petitioners have filed a suit in O.S.No.1469 of 2016 for permanent injunction. Thereafter, the revision petitioners have filed an application in I.A. No.746 of 2016 in O.S. No.1469 of 2016 for appointment of Advocate Commissioner to measure the suit property and note down the physical features of the suit property. According to the learned counsel for the revision petitioners, from the date of purchase of the property, the first petitioner and his father are in peaceful possession and enjoyment. On 07.09.2011, a partition was placed for the family properties and the petitioners mentioned the properties omitted to their share. The respondents have the property on the sides of East, West and South and the respondents taking advantage of three sides are trying to dispossess them from the property. When, the respondents are not ready to measure the suit property, the revision petitioners filed the aforesaid suit for permanent injunction and thereafter, filed the aforesaid application. Without considering the contention raised by the revision petitioners, the Court below has erroneously dismissed the said application. Therefore, the revision petitioners have filed the present

civil revision petition before this Court.

3. The learned counsel for the revision petitioners would submit that in order to minimize the evidence at the time of trial, the present application has been filed by the petitioners. Therefore, no prejudice would be caused to the respondents by allowing the said application.

4. However, considering the facts and submissions made by the learned counsel for the petitioners, the present application filed by the revision petitioners seeking for appointment of Advocate Commissioner can not be entertained. Therefore, the Court below has rightly held that the revision petitioners should not seek the appointment of advocate commissioner for the purpose of collecting evidence. In the light of the case of *Kandasamy and other Vs. Syed Hashim*, reported in **2013-5-L.W.818** this Court has held as follows:

“It is well settled proposition of law that for the purpose of collecting evidence, no party can invoke order 26 Rule 9 CPC seeking appointment of Advocate Commissioner. In the instant case, though the respondent/plaintiff has claimed Rs.15 lakhs with subsequent interest and costs from the

petitioners/defendants, he has filed petition, seeking appointment of Advocate-Commissioner to estimate the cost of the construction, that would amount to collecting evidence, since the claim of the respondent/plaintiff was for a quantified sum. It is also pertinent to note that Advocate-Commissioner was appointed without issuance of notice to the petitioner/defendants and after inspection, he has filed his report, however, again the respondent/plaintiff filed I.A. No.810 of 2011 in the earlier I.A. No.679 of 2011 to reissue warrant to the same Commissioner for the purpose of estimating the value of the construction work.”

5. In view of the above, the order of the Court below does not warrant interference as no prima facie case has been made out. The Civil Revision Petition is dismissed, with the above observations. No Costs. Consequently, connected miscellaneous petition is closed.

20.12.2017

Index: Yes/ No

Internet: Yes/No

Speaking Order/Non Speaking Order

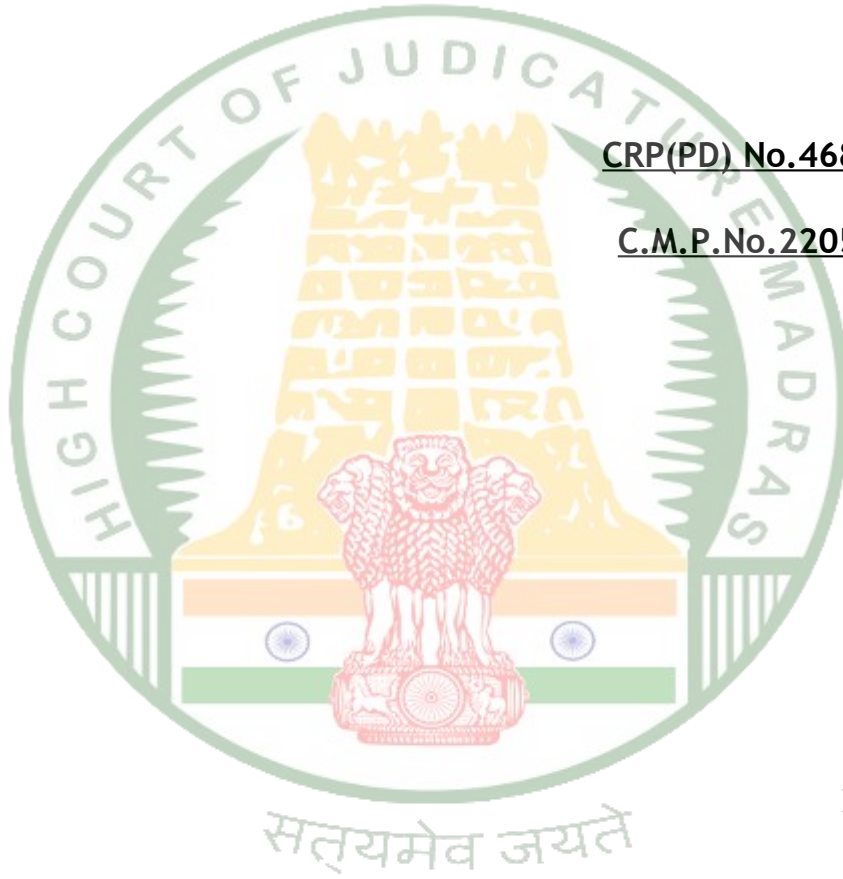
RKP

To

The II Additional District Munsif,
Coimbatore.

D. KRISHNAKUMAR J.,

RKP



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