

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1345 of 2013
& M.P.No.1 of 2013

1.Devammal @ S.B.Devaki
2.S.Dhinakaran
3.S.Ramanikaran
4.S.Lakshmikaran

.. Petitioners

Vs.

1.R.C.S.Rajkumar
2.M.Nirmala Rajkumar

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 27.08.2012 made in I.A.No.6 of 2012 in O.S.No.10 of 2012 on the file of the Additional District and Session Court - III, Tiruppattur, Vellore District.

For Petitioners : Mr.M.Muthappan

For R1 and R2 : Mr.R.Mahesh
for Mr.R.Subramanian

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 27.08.2012 made in I.A.No.6 of 2012 in O.S.No.10 of 2012 on the file of the Additional District and Session Court - III, Tiruppattur, Vellore District.

2. The petitioners are the plaintiffs and respondents are the defendants in O.S.No.10 of 2012 on the file of the Additional District and Session Court - III, Tiruppattur, Vellore District. The petitioners filed the above suit for declaring the right and title of the first petitioner herein over the A schedule properties, declaring the right and title of the petitioners 2, 3 and 4 herein over the B schedule properties, for consequential injunction, for cancellation of the registered sale deed dated 20.01.2010, to declare the title of the first petitioner herein over the C schedule property and to take possession of the same from the second respondent and for permanent injunction. The first respondent filed written statement and is contesting the suit. The petitioners filed I.A.No.6 of 2012 for appointment of an Advocate Commissioner to inspect, measure and to put up boundary stones surrounding the properties, which are

described in the A and B schedules.

3. According to the petitioners, the first respondent is the owner of adjoining property and is trying to interfere with the possession of the petitioner taking advantage of the mixed up survey numbers. The first respondent prevented the surveyor on three occasions to measure the petition property and lay the boundary stones by engaging rowdy elements. The petitioners have given a complaint to the concerned police and they have not taken any action. Hence, the petitioners have filed the suit and present I.A.No.6 of 2012 for appointment of Advocate Commissioner.

4. The respondents filed counter affidavit and opposed the said application. They submitted that the father and mother of the first respondent have given the property to the first respondent with specific boundaries and survey number. Therefore, Advocate Commissioner cannot be appointed for collection of evidence and prayed for dismissal of the application.

5. The learned Judge, considering all the averments made in the affidavit, counter affidavit and judgments relied on by the respondents, dismissed the application holding that it is for the petitioners to prove their case by let in oral and documentary

evidence.

6. Against the said order of dismissal dated 27.08.2012 made in I.A.No.6 of 2012 in O.S.No.10 of 2012, the present Civil Revision Petition is filed by the petitioners.

7. Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

8. The learned counsel appearing for the respondents relied on the judgment reported in **(2006) 4 LW 516 (Chinnathambi & Others Vs. Anjalai)** and submitted that the Advocate Commissioner cannot be appointed to collect evidence and prove their case.

9. From the materials available on record, it is seen that the petitioners filed suit for declaration and injunction. They have stated that the first respondent is trying to interfere with their possession and enjoyment of the property and the petitioners prevented the same. It is a specific case of the petitioners that the first respondent has prevented the petitioners from measuring their property with the help of rowdy elements. On three occasions, the first

respondent has prevented the petitioners from measuring their property with the help of surveyor and laying boundary stone in view of the mixed up survey numbers. It is not their case that the first respondent has already trespassed into their land or encroached their land. On the other hand, they seek appointment of Advocate Commissioner to measure the suit property with the help of surveyor and lay down the boundary stone. This will not amount to collecting evidence or finding out who is in actual possession of the suit property. The petitioners have filed the suit for declaration and there is dispute with regard to identification of the suit property. The learned Judge has failed to consider this fact and erroneously dismissed the application on the ground that the reason given by the petitioners is not valid. In such circumstances, the order of the learned Judge is liable to be set aside and it is hereby set aside.

10. In the result, the Civil Revision Petition is allowed by setting aside the order dated 27.08.2012 made in I.A.No.6 of 2012. The learned Judge is directed to appoint the Advocate Commissioner to inspect and measure the suit property with the help of surveyor and if necessary, permit the Advocate Commissioner to take aid of police to execute warrant of commission, within a period of two

weeks from the date of receipt of a copy of this order, with a direction to the Advocate Commissioner to file his report within four weeks thereafter. The learned Judge is further directed to dispose of the suit in O.S.No.10 of 2012 as expeditiously as possible in any event not later than four months from the date of receipt of report from the Advocate Commissioner. No costs. Consequently, connected miscellaneous petition is closed.

07.11.2017

Index : Yes/No

dm/kj

To

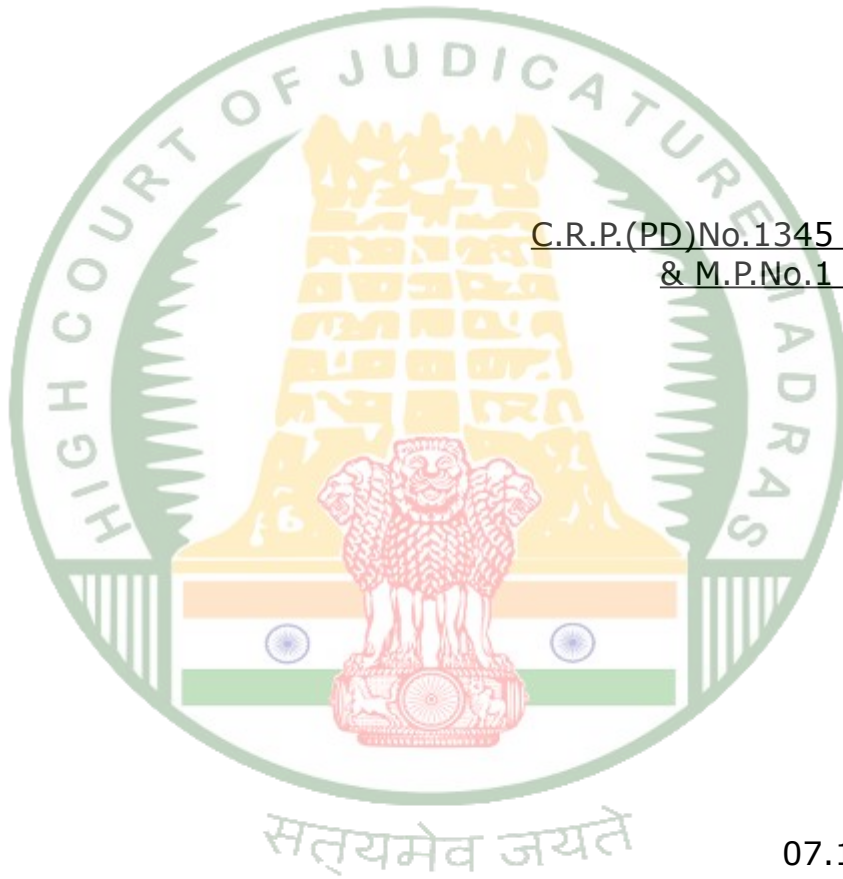
III Additional District and Session Judge
Tiruppattur, Vellore District.

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V.M.VELUMANI, J.

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