

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2017

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(PD) No.3254 of 2012
and
M.P.No.1 of 2012

1.P.Rajammal
2.P.Anandan

.. Petitioners

Vs

1.Janaki
2.A.Thangavelu
3.A.Shanmugham
4.A.Chidambaranathan
5.Vanitha Devi
6.A.Chandrasekaran
7.A.Murali

(Respondents 1 to 5 & 7 are represented by
their Power Agent A.Chandrasekaran
6th plaintiff)

8.Udhagamandalam Municipality
rep. by its Commissioner,
Municipal Office,
Udhagamandalam,
The Nilgiris.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decretal Orders dated 21.09.2011 made in I.A.No.653 of 2010 in O.S.No.94 of 2010 passed by the learned District Munsif, Udhagamandalam.

For Petitioners : Mr.J.Franklin

For Respondents : Mr.S.Sundaresan
(for R1 to R5 and R7)

No Appearance (for R6 & R8)

ORDER

In this Civil Revision Petition the petitioners who are the defendants 1 and 2 in the suit filed by the respondents 1 to 7 in O.S.No.94 of 2010 before the learned District Munsif Court at Udhagamandalam, challenging the order appointing Advocate Commissioner to inspect the suit property made in I.A.No.653 of 2010 dated 21.09.2011.

2.I heard Mr.J.Franklin, learned counsel for the petitioners and Mr.S.Sundaresan, learned counsel for the respondents 1 to 5 and 7 and perused the entire materials available on record. There is no representation on behalf of the respondents 6 and 8.

3.The perusal of impugned order discloses that the respondents 1 to 7 herein filed a suit against the revision petitioners

and 8th respondent herein for the relief of mandatory injunction, permanent Injunction and recovery of possession. Pending suit the plaintiffs took out an application seeking to appointment an Advocate Commissioner to inspect the suit property and note down the physical features.

4. In the commissioner application it is the contention that respondents 1 to 7/plaintiffs that the revision petitioners that have put up illegal construction in the suit schedule properties which according to the plaintiffs it belongs to them. Whereas, it is contention of the revision petitioners/defendants 1 and 2 that they are in peaceful possession and enjoyment of the disputed area over an extent of 338 sq.ft. The Trial Court on careful consideration of the case of the parties, come to conclusion that in order to ascertain the fact that whether an extent of 338 Sq.ft. which is lying in the suit property is the only access to the defendants 1 and 2 as common pathway or not has to be find out only appointing the Advocate Commissioner and by doing so no prejudices will be caused to the defendants 1 and 2.

5. This Court has carefully perused the impugned order which under challenge in this Civil Revision Petition. In fact, it is the prime

view of this Court that the report of Advocate Commissioner and Plan would enlighten the lower Court to come to a right and proper conclusion over the issue in question and I have uphold the said principle of law in my previous Judgments. The case on hand also required appointment of Advocate Commissioner and the order passed by the Trial Court in appointing advocate commissioner is absolutely necessary in the considered opinion of this Court so as to find out the ground reality in dispute.

6. Therefore, I do not find any infirmity or irregularity over the impugned order. In fine, I do not find any merits in this Civil Revision Petition and same is deserves to be dismissed.

7. In the result:

(a) this Civil Revision Petition is dismissed, by confirming the order passed in I.A.No.653 of 2010 in O.S.No.94 of 2010 on the file of the learned District Munsif Court, Udhagamandalam;

(b) the learned District Munsif Court, Udhagamandalam is hereby directed to appoint an Advocate Commissioner to make inspection and file a report within a period of one month from the date of receipt of a copy of this order;

(c) on filing the report, the learned District Munsif Court, Udhagamandalam is directed to dispose the suit within a period of three months thereafter. No. costs. Consequently, connected miscellaneous petition is closed.

19.06.2017

Note: Issue order copy on 28.01.2019
vs

Index : Yes

Internet : Yes

To

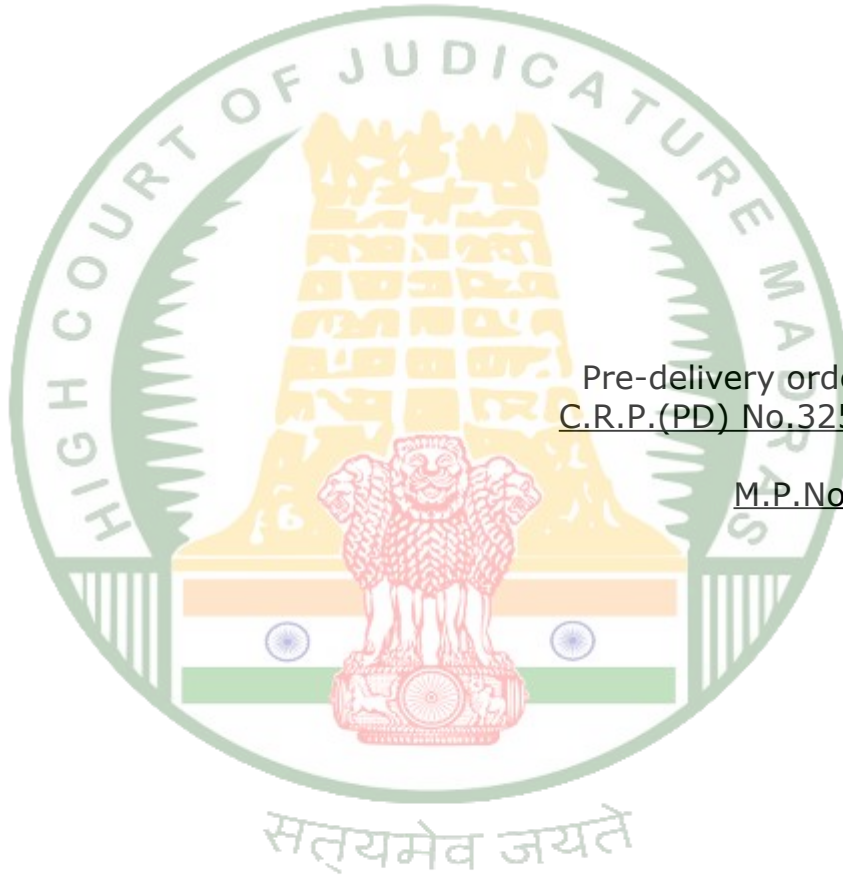
The District Munsif, Udhagamandalam.



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M.V.MURALIDARAN, J.

VS



Pre-delivery order made in
C.R.P.(PD) No.3254 of 2012
and
M.P.No.1 of 2012

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