

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.02.2017

CORAM

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

C.R.P.(PD) No.4554 of 2013 and
M.P.No.1 of 2013

1.Kasambu
2.Vijayalakshmi

.. Petitioners

vs

Ponnusamy

.. Respondent

Revision under Article 227 of the Constitution of India against the order dated 06.11.2013 made in I.A.No.189 of 2013 in O.S.No.33 of 2012 on the file of the Additional District Court, Namakkal.

For Petitioners : Mr.T.Dhanyakumar

For Respondent : Mr.C.Jagadish

ORDER

This Civil Revision Petition is directed against the order dated 06.11.2013 of the learned Additional District Court, Namakkal passed in I.A.No.189 of 2013 in O.S.No.33 of 2012, dismissing the petition filed by the petitioners under Order 26, Rule 9 of Code of Civil Procedure Code, 1908.

2. The petitioners, who are defendants in the suit have filed I.A.No.189 of 2013 under Order 26, Rule 9 of C.P.C. seeking to appoint an advocate commissioner to inspect the suit property and to submit a report with rough plan alleging that when P.W.1 was confronted with certain questions in cross-examination, he had conceded to the fact that he has no objection for the advocate commissioner to inspect the suit property and therefore, in order to find out portions wherein standing crops exist in the suit property, it is necessary that an advocate commissioner is to be appointed to inspect the suit property. Further, the report of the advocate commissioner would be very much helpful to the Court to dispose of the suit. Hence, the petition.

3. Resisting the petition, the respondent, who is the plaintiff, filed counter stating that he has filed the suit for partition and P.W.1 was examined in full and almost the evidence on the side of the respondent was at the final stage. Since the petitioners have not stated anything about the importance of appointment of advocate commissioner and also how the report of the advocate commissioner would be helpful to dispose of the suit, the present petition is not

maintainable. Only to drag on the trial proceedings, the petitioners have filed the petition and prayed for dismissal of the petition.

4. Upon consideration of the rival submissions, the trial Court dismissed the petition. Aggrieved by the same, the petitioners have filed the Civil Revision Petition.

5. The learned counsel for the petitioners submitted that the trial Court failed to understand the scope of Order 26 and failed to note that Rule 9 of C.P.C. facilitates the parties for appointment of advocate commissioner for the purpose of elucidating the matter in dispute. He would submit that the respondent has purchased a portion of the land and a common half share in the well portion and after purchasing of the property from Rajammal, the respondent laid a barbed wire fence on the southern portion of S.No.68/3 in the middle whereby an extent of 1.52 ½ acres has been earmarked which is adjoining S.No.68/1 and S.No.76. The said land was enjoyed by the respondent's predecessor Rajammal which was subsequently, sold to the respondent. Hence, the suit for partition is not maintainable and these facts can be established only by appointing the advocate commissioner and the trial Court without appreciating the aforesaid

facts dismissed the petition and hence, prayed for setting aside the order of the trial Court.

6. Per contra, the learned counsel for the respondent submitted that since the suit is for partition, there is no necessity to appoint an advocate commissioner and the suit will affect in any way, if the advocate commissioner not visited the suit property and filed report. Only after analysing the entire things, the trial Court dismissed the petition and therefore, no interference is required.

7. I have considered the submissions made by the learned counsel for the petitioners and the learned counsel for the respondent and also perused the materials available on record.

8. The grievance of the petitioners is that when P.W.1 was confronted with certain questions in cross-examination, he had conceded to the fact that he has no objection for the advocate commissioner to inspect the suit property. In order to find out portions wherein standing crops exist in the suit property, it is necessary to appoint an advocate commissioner and if the advocate commissioner visited the suit property and filed the report, it would be

helpful to the Court to dispose of the suit.

9.It appears that when the suit was listed for trial on 22.8.2012, I.A.No.139 of 2012 filed to receive the reply statement and the same was allowed. Thereafter, P.W.1 was examined and the respondent's side evidence was closed. On 26.8.2013, when the suit was listed for examination of witnesses on the side of petitioners, they have filed I.A.No.139 of 2013 to recall P.W.1 and cross-examine him and the same was allowed and P.W.1 was also cross-examined. While things stood thus, the petitioners have filed petition to appoint an advocate commissioner stating that when P.W.1 was cross-examined, he had deposed that he has no objection in appointing the advocate commissioner to inspect the suit property.

10. When this Court perused the evidence of P.W.1, he had categorically admitted that in between S.No.68/1 and 68/3, there exist barbed wire fence and that in between Kuchikizhangu land and the land owned by P.W.1, there exist a ridge and he has no objection to appoint an advocate commissioner to inspect the ridge lying in between Kuchikizhangu land and the land owned by him. Since in his cross-examination itself, P.W.1 stated that there is a ridge in between

Kuchikizhangu land and his land, there is no necessity to appoint an advocate commissioner. Moreover, since the suit is one for partition and separate possession, the report of the advocate commissioner would in no way helpful to decide the case. This Court finds that there was no bona fide in the petition filed by the petitioners and thus, the trial Court was right in dismissing the petition. There is no perversity and/or illegality in the order of the trial Court. No valid grounds have been made out to interfere with the order of the trial Court and therefore, the appeal is liable to be dismissed.

11. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. Since the suit is of the year 2012, the trial Court is directed to dispose of the same within a period of two months from the date of receipt of a copy of this order. Both parties are directed to co-operate for disposal of the suit within the stipulated time.

vs

Note: Issue order copy on 08.01.2019

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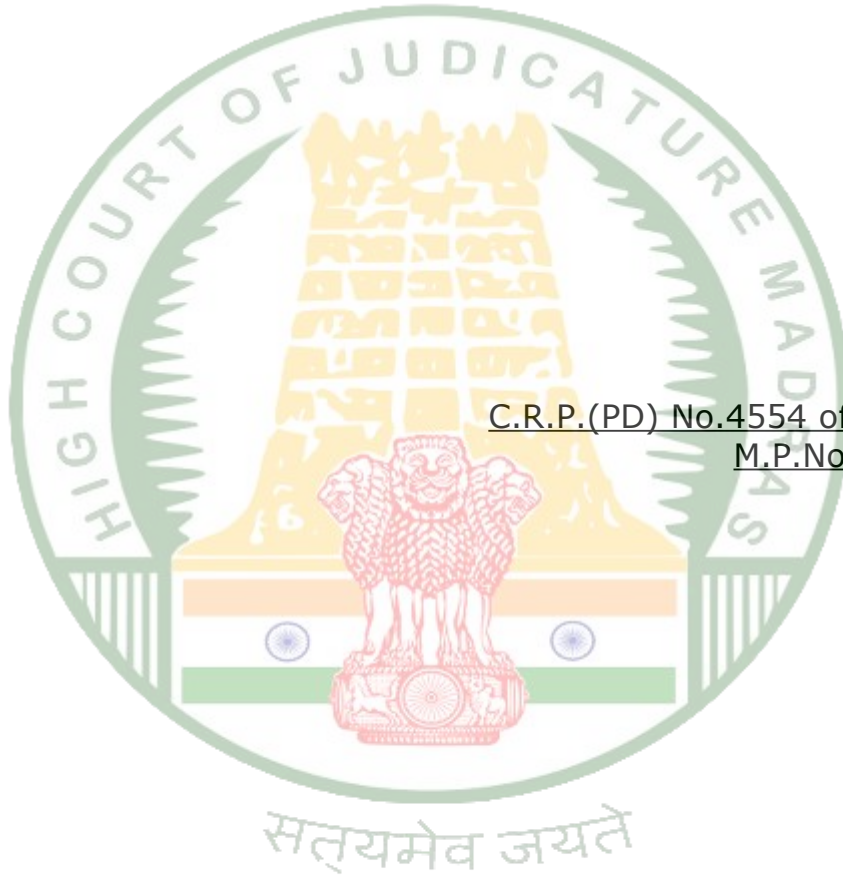
The Additional District Court,
Namakkal.



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M.V.MURALIDARAN, J.

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