

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2017

CORAM

THE HON'BLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.4075 of 2012  
and C.M.P.Nos.13972 to 13974 of 2017  
and M.P.No.1 of 2012

Sundari.K. Venkatachalam

.. Petitioner

Vs

1.Balakrishnan @ Shiva Balakrishnan (Deceased)  
2.Sellambayi  
3.B.Senthilkumar  
4.B.Subhashini  
5.B.Thirunavukarasu

.. Respondents

(R3 to R5 brought on record as LR's of deceased 1st respondent vide order of Court dated 18.08.2017 made in C.M.P.No.13972 to 13974 of 2017 in C.R.P.(PD).No.4075 of 2012)

**Prayer:-** Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal Order 31.07.2012 made in I.A.No.292 of 2012 in O.S.No.186 of 2010, on the file of the District Munsif Court at Rasipuram.

For Petitioner : Mr.P.Mathivanan

For R2 to R5 : Mr.S.Sithirai Anandan

For R1 : Died

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**ORDER**

This Civil Revision Petition has been filed to set aside the Fair and Decreetal Order 31.07.2012 made in I.A.No.292 of 2012 in O.S.No.186 of 2010, on the file of the District Munsif Court at Rasipuram.

2. The petitioner is the defendant and the respondents are the plaintiff in O.S.No.186 of 2010 on the file of the District Munsif, Rasipuram. The respondents filed the said suit for declaration and injunction. The respondents filed an I.A.No.930 of 2010 for appointment of Advocate Commissioner to inspect the suit property and file report. An Advocate Commissioner was appointed. He inspected the property in the presence of the petitioner, respondents and their respective counsels and the Village Administrative Officer and measured the suit property with the help of Government Surveyor and filed his report. The petitioner did not file any objection.

3. The petitioner filed the present I.A.No.292 of 2012 to scrap the report of the Advocate Commissioner and to appoint another Advocate Commissioner to inspect the suit property and file report. According to the petitioner, the Advocate Commissioner appointed in I.A.No.930 of 2010 committed various errors in the report as mentioned in the affidavit and therefore prayed for

scraping the report of the Advocate Commissioner. The respondents filed counter affidavit and denied all the averments made by the petitioner. The learned Judge considering the averments in the affidavit, counter affidavit and materials on record dismissed the application.

4. Against the said order dated 31.07.2012 made in I.A.No.292 of 2012 in O.S.No.186 of 2010, the present Civil Revision Petition is filed by the petitioner.

5. Heard the learned counsel appearing for the petitioner and the respondents 2 to 5 and perused the materials available on record.

6. From the materials on record, it is seen that the Advocate Commissioner inspected the suit property in the presence of the petitioner, respondents and their respective counsels and the Village Administrative Officer and the property was measured with the help of Government Surveyor. The Advocate Commissioner filed his report with sketch. Parties were given time to file objection to the report. The petitioner did not file any objection and after five months filed the present I.A.No.292 of 2012 to scrap the report of the Advocate Commissioner and appoint another Advocate Commissioner. Having failed to file any objection to the report of the Advocate Commissioner, petitioner is not entitled to maintain the present application, especially when

the Advocate Commissioner inspected the property in the presence of parties and their respective counsels and measured the property with the help of Government Surveyor. It is well settled that the report of the Advocate Commissioner is only to assist the Court to come to the correct conclusion based on the evidence let in by the parties. The parties have right to examine the Advocate Commissioner with regard to his report and can prove that the said report is not correct. The learned Judge has considered all the above facts in proper perspective and dismissed the application. In the circumstances, there is no irregularity or illegality warranting interference with the order of the learned Trial Judge dated 31.07.2012, warranting interference by this Court.

7. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed. No costs.

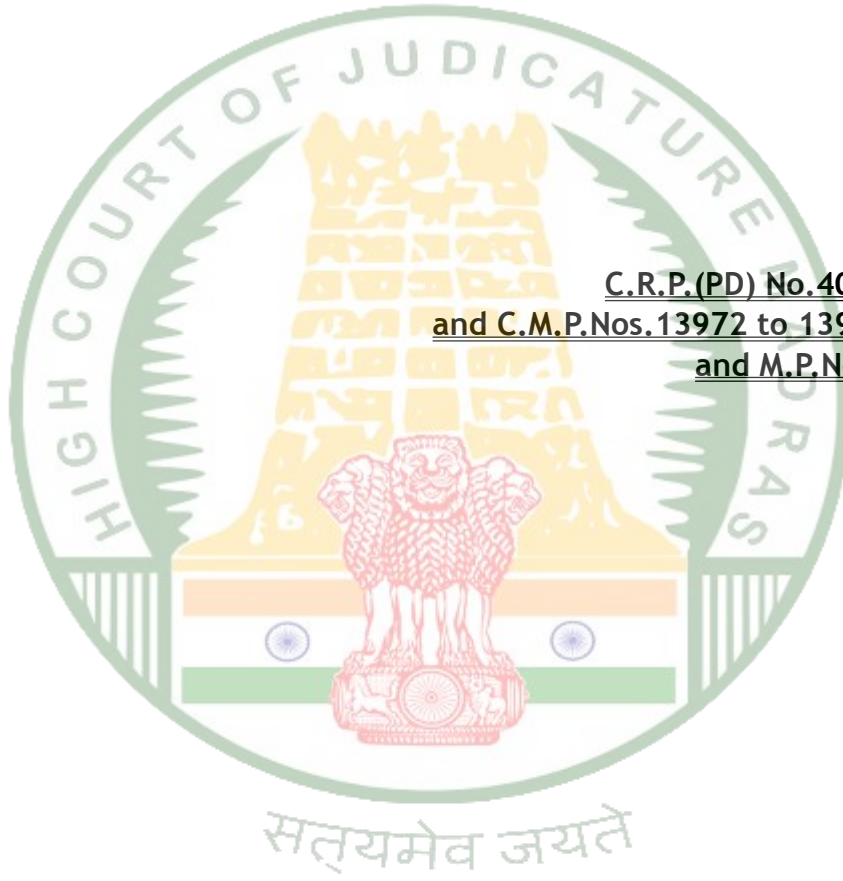
22.08.2017

rna

To

The District Munsif Court,  
Rasipuram.

V.M.VELUMANI,J



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