

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.4557 and 4303 of 2012
& M.P.Nos.1, 1 of 2012

Kuppusamy @ Kuppuvel

.. Petitioner in
C.R.P.No.4557 of 2012

1.Narayanan @ Narayanasamy
2.Kuppusamy @ Kuppuvel

.. Petitioners in
C.R.P.No.4303 of 2012

Vs.

1.Ragunathan
2.Arumugam
3.Chinnadurai

.. Respondents in
C.R.P.No.4557 of 2012

1.P.Palanisamy
2.Karuppusamy
3.Ragupathi

.. Respondents in
C.R.P.No.4303 of 2012

C.R.P.(PD)No.4557 of 2012 is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 19.07.2012 made in I.A.No.267 of 2011 in O.S.No.76 of 2009 on the file of the Subordinate Court, Bhavani.

C.R.P.(PD)No.4303 of 2012 is filed under Article 227 of the Constitution of India, against the fair and decretal order dated

13.07.2012 made in I.A.No.131 of 2011 in O.S.No.167 of 2010 on the file of the II Additional District Munsif Court, Bhavani.

In C.R.P.No.4557 of 2012

For Petitioner : Mr.R.Ezhilarasan
For Respondents : Ms.Zeenath Begum

In C.R.P.No.4303 of 2012

For Petitioner : Mr.R.Ezhilarasan
For R1 : Ms.Zeenath Begum
For RR2 and 3 : Mr.MA.P.Thangavel

COMMON ORDER

C.R.P.(PD)No.4557 of 2012 is filed against the fair and decretal order dated 19.07.2012 made in I.A.No.267 of 2011 in O.S.No.76 of 2009 on the file of the Subordinate Court, Bhavani.

2. C.R.P.(PD)No.4303 of 2012 is filed against the fair and decretal order dated 13.07.2012 made in I.A.No.131 of 2011 in O.S.No.167 of 2010 on the file of the II Additional District Munsif Court, Bhavani.

3. The petitioners and the respondents in both the civil revision petitions are the plaintiffs and the defendants in O.S.Nos.76 of 2009 and 167 of 2010. The petitioners filed suits in O.S.Nos.76 of 2009 and 167 of 2010 for declaration that the sale deed dated 20.10.2009 is null & void and entitled for a preferential right to

purchase and acquire the interests of the respondents 2 and 3 in C.R.P.No.4303 of 2012 and for a direction to the respondents to execute the sale deed in favour of the petitioner after receiving the sale price of Rs.1,00,000/- & Rs.40,000/- respectively and for consequential injunction.

4. The respondents filed I.A.No.267 of 2011 in O.S.No.76 of 2009 and I.A.No.131 of 2011 in O.S.No.167 of 2010 for appointment of an Advocate Commissioner to note down the physical features of the suit property, to submit the report and plan.

5. According to the respondents, they have purchased the suit property on 20.10.2009 from the respondents 2 & 3 in C.R.P.No.4303 of 2012 and from that date onwards, they are in possession and enjoyment of the same. Their respective shares were demarcated with pathway and their properties were fenced. The Advocate Commissioner is necessary to note down the physical features, well and number of coconut trees situated in the suit property.

6. The petitioners filed counter affidavit and opposed the said applications on the ground that in the nature of the relief sought for by them, there is no necessity for appointment of Advocate Commissioner to note down the physical features, count the number

of trees and find out the situation of the well in the suit property. The respondents stated that 1/8th share in their properties are demarcated with separate pathway. The physical features of the property is not essential to decide the issues in the suits.

7. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, allowed the applications on the ground that if Advocate Commissioner inspects the properties and files his report, it will help the Court in deciding the issues in the suits and no prejudice would be caused to the petitioners.

8. Against the order dated 19.07.2012 made in I.A.No.267 of 2011 in O.S.No.76 of 2009 and order dated 13.07.2012 made in I.A.No.131 of 2011 in O.S.No.167 of 2010, the present two civil revision petitions are filed by the petitioners/plaintiffs.

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

10. From the materials on record, it is seen that the respondents in C.R.P.No.4557 of 2012 and third respondent in C.R.P.No.4303 of 2012 filed applications for appointment of

Advocate Commissioner to note down the physical features, well and number of coconut trees situated in the suit property. According to the respondents, the inspection by the Advocate Commissioner with regard to the physical features and his report are necessary to decide the issues in both the suits. This contention has no merits. The petitioner has sought for the relief of declaration of the sale deed as null and void, for specific performance and for injunction. To decide these issues, report of the Advocate Commissioner is not necessary. The report of the Advocate Commissioner with regard to the physical features of the suit property and other details will not help the Court to decide the relief of declaration, specific performance and injunction sought for by the petitioners.

11. In view of the above, the learned Judge failed to consider the nature of the relief sought for by the petitioners in the suits and at what stage of the suits, the applications for appointment of Advocate Commissioner were filed. The reasoning given by the learned Judge for appointment of Advocate Commissioner is not valid and has committed irregularity in appointing the Advocate Commissioner and he has not properly exercised his power conferred on him.

12. In the result, the Civil Revision Petitions are allowed and I.A.No.267 of 2011 in O.S.No.76 of 2009 and I.A.No.131 of 2011 in

O.S.No.167 of 2010 are dismissed. If the Advocate Commissioner has filed any report, the same shall be eschewed. No costs. Consequently, connected Miscellaneous Petitions are closed.

27.07.2017

Index : Yes/No
Speaking/Non Speaking order
kj

To

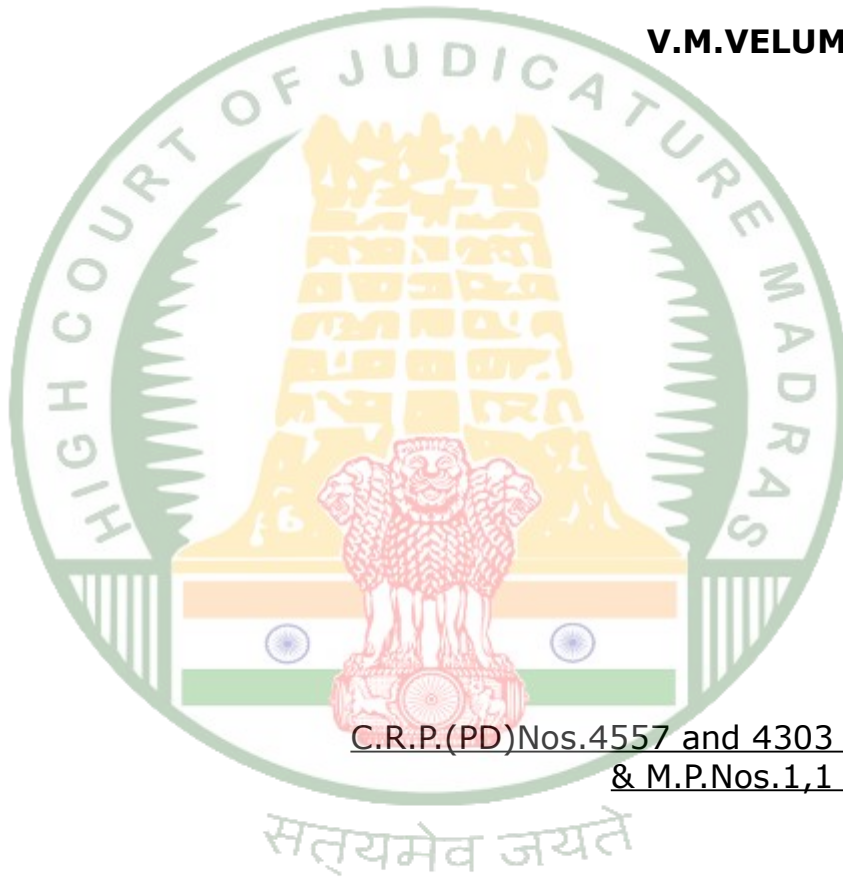
- 1.The Subordinate Judge, Bhavani.
2. II Additional District Munsif, Bhavani.



WEB COPY

V.M.VELUMANI, J.

kj



C.R.P.(PD)Nos.4557 and 4303 of 2012
& M.P.Nos.1,1 of 2012

WEB COPY

27.07.2017