

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.06.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD) No.1548 of 2018
and C.M.P.No.8267 of 2018

A.Mohan (Died)

1. P.Uma
2. Suseela
3. Navamani
4. Karthick
5. Sathishkumar

... Petitioners

Vs.

1. N.Mahendran
2. G.Nagarani
3. K.A.Mannan
4. G.M.Yusuf Alikhan

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order 06.02.2018 made in I.A.No.7 of 2018 in O.S.No.208 of 2013 on the file of the learned Additional Special Judge, Krishnagiri District.

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For Petitioners : Mr.M.J.Jaseem Mohammed

For Respondent : No appearance for R1 / Caveator

ORDER

The relief sought for in this revision petition is to set aside the fair and decreetal order made in I.A.No.7 of 2018 in O.S.No.208 of 2013, dated 06.02.2018, on the file of the learned Additional Special Judge, Krishnagiri District.

2. This Civil Revision petition is filed by the plaintiffs in the suit in O.S.No.208 of 2013 on the file of the learned Additional Special Judge, Krishnagiri for declaration and permanent Injunction.

3. When the matter is pending, the petitioners/ plaintiffs filed an Interlocutory application under Order XXVI Rule 9 of C.P.C in I.A.No.7 of 2018 for appointment of an Advocate Commissioner to measure and identify the suit property.

4. The learned trial Judge dismissed the application on the ground that the petitioners have filed this application belatedly.

5. Aggrieved against the said order dated 06.02.2018, the revision petitioners are before this Court with this Civil revision petition.

6. Heard the learned counsel for the petitioners and perused the available materials on records.

7. The learned counsel for the petitioners submitted that the dispute in order to identify the suit property, measurement is necessary for which appointment of an Advocate commissioner is necessary and he has also placed his reliance on the following Judgments:

1. **CDJ 2005 MHC 1144 - Sivagurunathan Vs Ramalingam & Others**
2. **2000 (I) CTC 279 - Pillaiyar Vs. Ganesan and another.**
3. **JT 2000 (7) SC 379 - Shreepat Vs. Rajendra Prasad & Ors.**

8. The revision petitioners filed the suit in the year 2013 for declaration and permanent injunction and the suit is pending from 2013. During the pendency of the suit, the petitioners filed Interlocutory Application in I.A.No.7 of 2018 in O.S.No.208 of 2013 for appointment of an Advocate Commissioner to identify and measure the suit property.

9. The trial Court after considering the matter elaborately, dismissed the application that the application is filed belatedly and the petitioners have to establish their case with the available documents and there is no need to appoint an Advocate Commissioner for collecting the evidence. Since, the suit is for declaration, the plaintiffs have to establish their case through oral and documentary evidence. In case of doubtful regarding identity of the property or measurement, they ought to have filed the application at the time of filing the suit itself, but not after commencement of the trial. That being the actual positions, they have to establish their case with the available documents on their own and not through an advocate Commissioner. After commencement of trial, filing an application for appointment of an Advocate Commissioner is only either to drag on the proceedings or try to procure the evidence through advocate commissioner which is not permissible under law. The citations referred to by the learned counsel for the petitioners is not applicable to the facts of the present case on hand.

10. The trial Court has rightly dismissed the application filed by the petitioners for appointment of an Advocate Commissioner. There is no infirmity in the order passed by the Trial Court and there is no merits in this revision petition.

11. In the result, the Criminal Revision petition stands dismissed.
Consequently, the connected Miscellaneous petition is also closed. No costs.

04.06.2018

Index:Yes/No

Speaking order / Non speaking order

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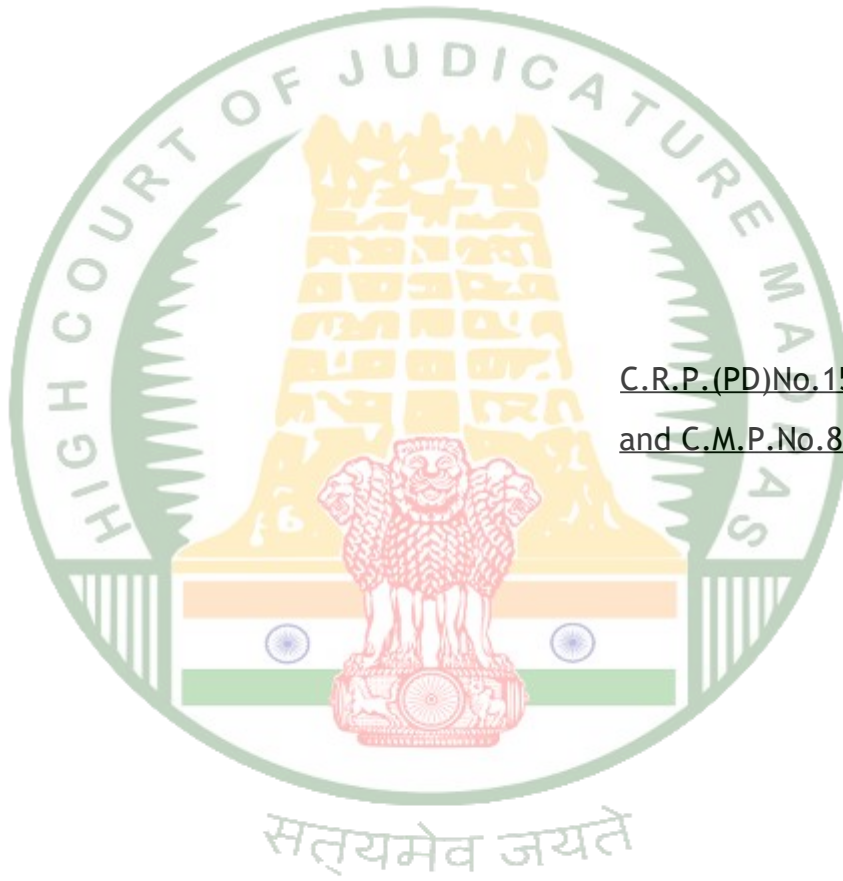
The Additional Special Judge,
Krishnagiri District.



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P.VELMURUGAN, J.,

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