

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.10.2018

Coram

The Honourable Ms.Justice P.T.ASHA

**C.R.P(PD)No.3730 of 2012
and
M.P.No.1 of 2012**

- 1.Tmt.M.K.Chandra Bai
- 2.Thiru.J.Dhandapani
- 3.Tmt.A.Parvatham
- 4.Tmt.C.K.Chandra Bai
- 5.C.J.Krishnamoorthi
- 6.N.K.Kumaresan
- 7.Jayanthi

...Petitioners

Versus

- 1.Tmt.Kasthuri Parthasarathy
- 2.Sri Jaya Educational Trust,
Rep. by its Chairman,
Mr.K.K.Selvam, 1, V.O.C Street,
Kodambakkam, Chennai - 600 024.

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order in I.A.No.208 of 2012 in O.S.No.91 of 2012 on the file of the Subordinate Court, Poonamallee dated 30.05.2012.

For Petitioners : Mr.Sharath Chandran
for Mr.V.Raghavachari

For Respondent - 1 : Not ready in notice

Respondent - 2 : Given up

ORDER

This Civil Revision Petition is filed challenging the non speaking order of the learned Subordinate Judge, Poonamallee in I.A.No.208 of 2012 in O.S.No.91 of 2012, in and by which the learned Judge has appointed an Advocate Commissioner to inspect the suit property.

2. The facts in brief are as follows:

The first respondent herein had filed the suit O.S.No.91 of 2012 for the following reliefs:

"(a) for declaring the decree and judgment in O.S.No.203 of 1996 on 22.01.2010 by the Honourable Subordinate Judge, Poonamallee as null and void, non-est, not-binding on the plaintiff"

(b) for a mandatory direction to the defendants, their men, agents, servants, person or persons acting for and on their behalf or through or under them to handover/deliver/restore possession to the plaintiff, the property described in the Schedule of the plaint.

(c) for permanent injunction, restraining the defendants, their men, agents, servants, person or persons acting for and on their behalf or through or under them, from in any manner, whatsoever,

dealing with, alienating, encumbering, creating, charge over the property described in the plaint schedule."

3. Pending the suit, the first respondent had also taken out an Interlocutory Application in I.A.No.208 of 2012 for appointing an Advocate Commissioner to inspect the property, note down the physical features and submit a report. This relief was in addition to other interim reliefs. In paragraph No.14 of the affidavit filed in support of the said Application, the first respondent had given reasons for appointing an Advocate Commissioner which reads as follows:

"Ever since the year 1942, the possession remained with our family. The respondent did not have the benefit of order of injunction pending suit i.e., before the Trial Court. The correspondences, documents and exhibits marked in the suit would go to show that we are in possession of the property all along. The respondents have interfered with our possession based on the judgment and decree made in O.S.No.203 of 1996 and batch dated 22.01.2010. Hence, we are entitled to restoration of possession. Unless the possession is restored, prejudice and loss would be caused to me. Our assets apart from books of accounts of M/s.Jothi Brick Works, are in

the property. We were carrying on Brick Klin business. There are several tenants who have also been dispossessed. The photographs are proof of the same. Since relief leave was also granted for filing a suit for damages, I am seeking the benevolence of this Hon'ble Court to appoint an Advocate Commissioner to inspect the property, file a report as regards the status and conditions of the property. Unless the Advocate Commissioner is appointed untold hardship and injury would be caused not only to me but all other parties."

4. On the basis of this prayer, the learned Subordinate Judge, Poonamallee had passed an ex-parte order appointing the Advocate Commissioner. The order is a non-speaking order and the only reason which is given is that the petitioner is now seeking for an appointment of the Advocate Commissioner to note down the physical features and considering his plea, the Advocate Commissioner is appointed.

5. Heard Mr.Sharath Chandran, learned counsel for the revision petitioners.

6. The learned Judge has totally overlooked the fact that the suit is to declare the earlier decree as null and void and for restoring the possession of the suit property. The affidavit which is filed in support of the impugned Application does not give any reasons necessitating the appointment of the Advocate Commissioner and the order further does not give any reasons for allowing the Application. Considering the one line non-speaking order and the fact that appointing an Advocate Commissioner is not necessary in a suit of this nature, I find that the order passed in the impugned Application suffers from an infirmity and therefore, the same is liable to be set aside.

7. In the result, this Civil Revision Petition is allowed and the order passed by the learned Subordinate Judge in I.A.No.208 of 2012 in O.S.No.91 of 2012 dated 30.05.2012 is set aside. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

22.10.2018

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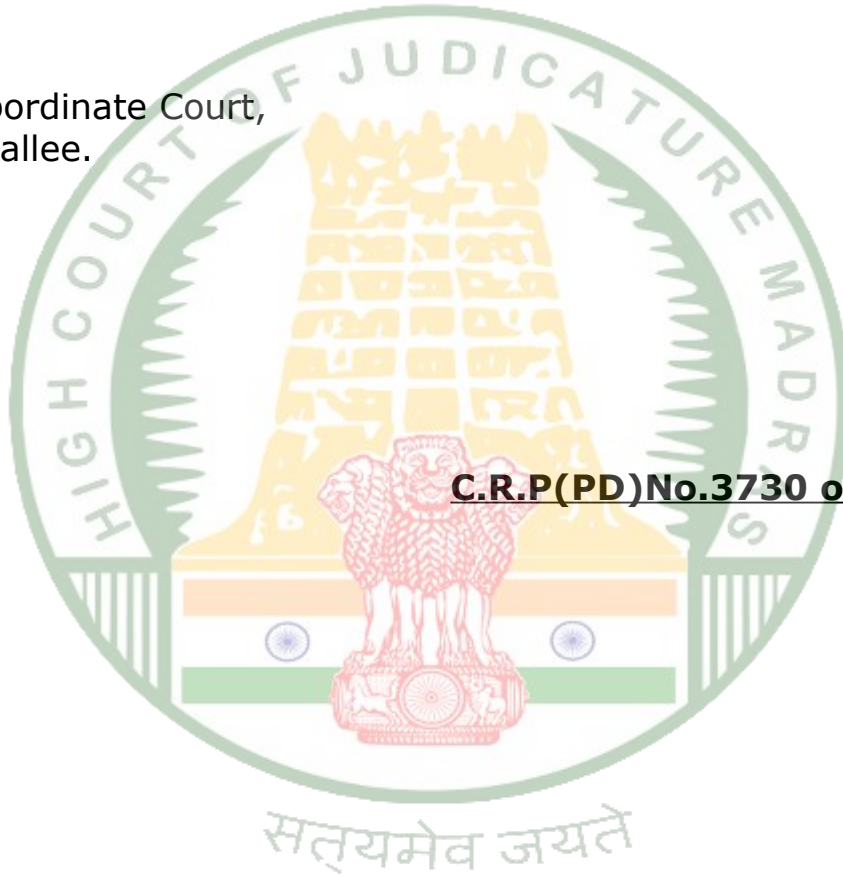
Index: Yes/No

P.T.ASHA, J.,

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To

The Subordinate Court,
Poonamallee.



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