

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3846 of 2014
and M.P.No.1 of 2014

1.Rani
2.Saroja
3.Manickam
4.Lakshmi
5.Maniammai

.. Petitioners

Vs.

Krishnan

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 19.06.2014 made in I.A.No.511 of 2014 in O.S.No.227 of 2013 on the file of the Principal District Munsif Court, Tirupattur, Vellore District.

For Petitioners : Mr.PA.Sudesh Kumar

For Respondent : Mr.V.Lakshmi Narayanan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 19.06.2014 made in I.A.No.511 of 2014 in O.S.No.227 of 2013 on the file of the Principal District Munsif Court, Tirupattur, Vellore District.

2. The petitioners are the defendants and respondent is plaintiff in O.S.No.227 of 2013 on the file of the Principal District Munsif Court, Tirupattur, Vellore District. The respondent filed the said suit for declaration of title and permanent injunction. The petitioners filed written statement on 24.01.2014 and are contesting the suit. The petitioners filed I.A.No.511 of 2014 for appointment of Advocate Commissioner to note down the physical features of the suit properties along with the surveyor and to file report.

3. According to the petitioners, the suit property and property purchased by the vendors of the respondent, the predecessor in title are different. The property belonged to the predecessor in title of the respondent is only in respect of S.No.382/9A, whereas the respondent is claiming title in respect of to S.No.381/4A and 4B. In

view of the dispute with regard to the properties and to prove the same, appointment of Advocate Commissioner is necessary.

4. The respondent filed counter affidavit and denied all the averments made in the application and contended that the respondent has filed suit only for the property purchased by him. The suit property is one and the same as mentioned in the sale deed purchased by the predecessor in title. To prove that, appointment of Advocate Commissioner is not necessary and prayed for dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application holding that the parties must prove their claim by letting in evidence.

6. Against the said order of dismissal dated 19.06.2014 made in I.A.No.511 of 2014, the present Civil Revision Petition is filed by the petitioners/defendants.

7. Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

8. The respondent filed suit for declaration and injunction. According to the petitioners, the property purchased by the predecessor in title of the respondent is different from the suit property. The respondent has not acquired any title for the suit property from his vendor. Based on this contention, the Advocate Commissioner cannot be appointed. When the respondent has come out with a specific case that the suit property belonged to him and he has purchased the property, it is for the respondent to prove his case by letting in acceptable evidence. Similarly, the petitioners also have to produce evidence to substantiate their case with regard to difference in the properties as claimed by them. It is well settled that the parties must prove their case by letting in evidence and the Advocate Commissioner cannot be appointed to collect evidence.

9. For the above reason, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

30.01.2018

Index:Yes/No

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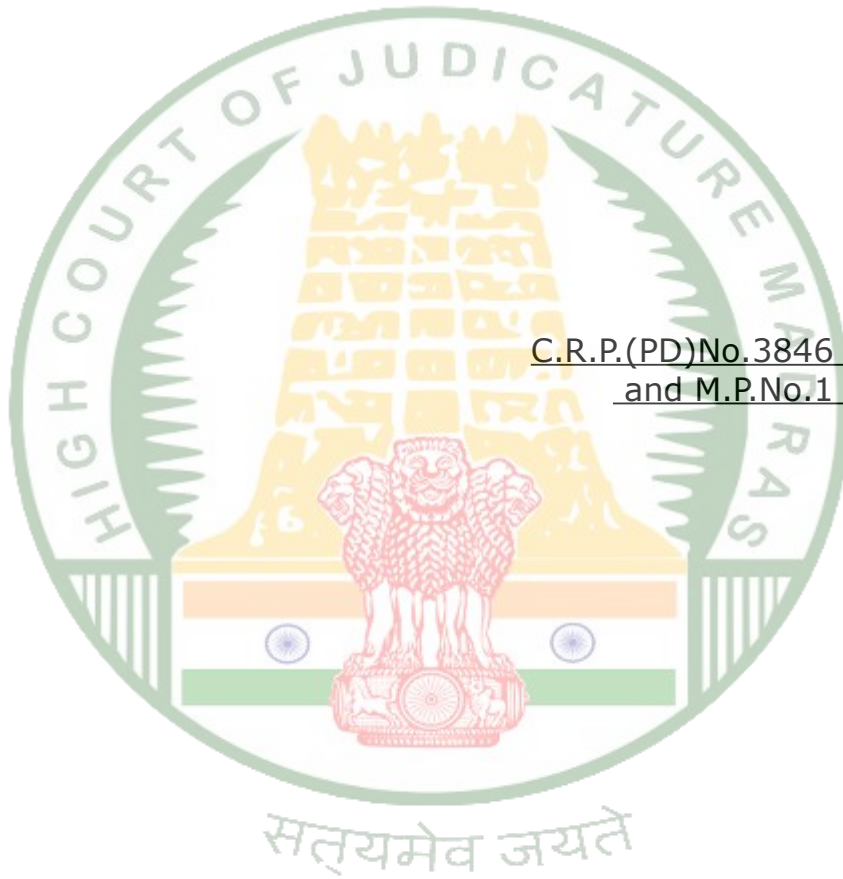
The Principal District Munsif
Tirupattur, Vellore District.



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V.M.VELUMANI,J.

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