

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.06.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD).No.311 of 2018

and C.M.P.No.1681 of 2018

A.Mohandoss

... Petitioner

Vs.

1. Dr.M.Sivalingam
2. Dr.Jamila Ponmalar
3. Jayalakshmi
4. Pushparani
5. Ravindran
6. K.Balaji

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order passed in I.A.No.241 of 2017 in O.S.No.164 of 2016 dated 12.12.2017 on the file of the learned District Munsif of Katpadi, Vellore.

For Petitioner : Mr.C.Ravichandran
for Mr.S.D.Venkateswaran

For Respondents : Mr.John Peter

ORDER

The relief sought for in this revision petition is to set aside the fair and decretal order made in I.A.No.241 of 2017 in O.S.No.164 of 2016 dated 12.12.2017 on the file of the learned District Munsif, Katpadi, Vellore.

2. The respondents filed a suit in O.S.No.164 of 2016 before the learned District Munsif, Katpadi, Vellore for declaration and permanent Injunction. Subsequently, the respondents filed an application under Order XXVI Rule 9 of C.P.C in I.A.No.241 of 2016 in O.S.No.164 of 2016 for appointment of an Advocate Commissioner to measure and note down the physical features of the A-Schedule mentioned property.

3. The learned counsel for the revision petitioner contended that already prayer A and C sought for in the plaint is that was given or not. But there is no dispute with reference to the extent of the pathway, the title and the status of the pathway cannot be decided by an Advocate Commissioner. Therefore, he insisted the relief sought for in the prayer in A Schedule property.

4. According to the learned counsel for the petitioner that there is no dispute with regard to extent of the pathway, whether it is a private pathway or a public pathway has to be decided only after trial. The Advocate Commissioner cannot decide whether it is a public pathway or the private pathway. Therefore, the appointment of an Advocate Commissioner is unnecessary .

5. The learned counsel for the respondents would submit that the Advocate Commissioner visited and inspected the property and filed an inspection report before the District Munsif Court. The learned counsel for the petitioner submits that the petitioner has already obtained an Interim stay from this Court.

6. On a careful perusal of records, it is seen that stay was granted by this Court only on 30.01.2018. Whereas the learned Advocate Commissioner has already filed his report on 23.01.2018 itself. Therefore nothing survives in this revision for adjudication.

7. In the result, this Civil Revision petition is dismissed. Consequently, connected Miscellaneous petition is also closed. No costs.

Index:Yes/No
Speaking order / Non speaking order
vum

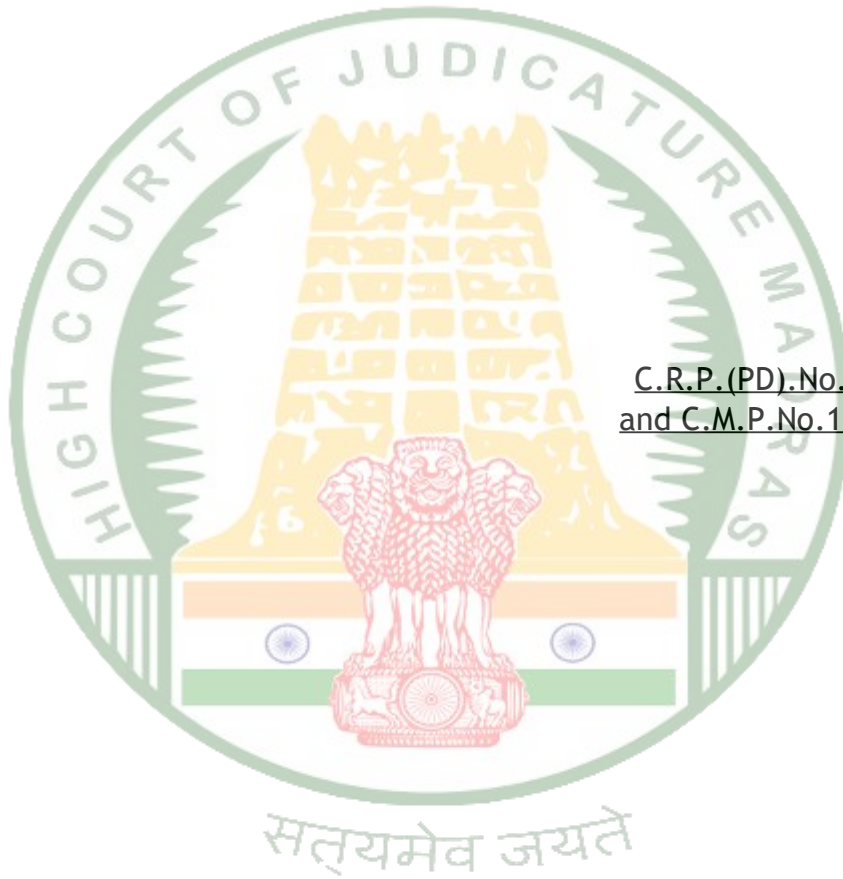
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P.VELMURUGAN, J.,

vum

To
The District Munsif,
Katpadi, Vellore.



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