

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

C.R.P.(PD).No.309 of 2015

&

M.P.No.1 of 2015

1. Jayalakshmi (Deceased)
2. Sathiyaseelan

3. Balasundaram

4. Balamurugan

5. Velmurugan

6. Senthil Murugan

7. Selvi. Anandalakshmi

(Petitioners 3 to 7 brought on records as LRs of deceased 1st petitioner vide order of Court dt. 02.02.2017, made in CMP 985/17 to 987/17 in CRP (PD) 309/2015)

... Petitioners

Vs.

1. Rajalakshmi

2. Subbaiah

3. The Branch Manager,
Repco Home Finance Ltd.,
No.33, North Usman Salai,
T.Nagar,
Chennai - 17.

4. Manoharan

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5. The Branch Manager,
Central Bank of India,
K.K.Road,
Villupuram.

6. Muthulakshmi

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the Fair and Decretal order dated 28.11.2014 in I.A. No.642/2014 in O.S. No.477 of 2010 on the file of the Additional District Munsif, Villupuram.

For Petitioners : Mr.N.Suresh

For Respondents : Mrs.R.Meenal for R2

No appearance for R1 and R3 to R6.

ORDER

The present Civil Revision Petition is filed against the order rejecting the petitioner's application seeking for appointment of an Advocate commissioner.

2. The learned counsel for the petitioner submits that since the relief sought for in the suit is for declaration of title and consequential injunction, this application is necessary in order to ascertain the areas in which the alleged encroachment has been made, in view of the denial by the defendants in the written statement, they are not in occupation of the suit properties as pointed out in the schedule to the plaint.

3. The learned counsel for the respondent on the other hand submits that the petitioners herein have specifically come out with a plea with regard to the defendant's possession in the subject properties, which has been pointed out in Schedule 1 to 4 and as such by resorting to appointment of an Advocate Commissioner, the petitioners herein are only trying to collect evidence, which is not permissible.

4. In view of the plaint averments and the extents specified in the schedule of properties with regard to the respondents' possession, the petitioners herein are not justified for the relief sought in the application.

5. I have given careful consideration to the submissions made by the both counsel.

6. The main relief sought for in the suit is for declaration of title and for permanent injunction. The application under Order 26 Rule 9 of C.P.C. is only for the purpose of investigating any matter which is in dispute and for the purpose of assisting the Court to come to a just and proper conclusion.

7. In the instant case, what is required to be seen is the prejudice that will be caused to the respondent, if such an Advocate Commissioner is appointed for the purpose of measuring the properties. The plaintiffs have come out with a defence that the respondents herein have allegedly encroached upon the suit properties. Once the defendants have denied such encroachment and while claiming right over the suit properties, they have also spelt out the portion of land, which is in their possession. All these facts require to be established during the course of trial with proper evidence. Nevertheless, in so far as the appointment of Advocate Commissioner is concerned, I do not find any prejudice caused to the respondent by such an appointment of Advocate Commissioner. The report from the Advocate Commissioner would only facilitate the Court to bring the dispute to a logical conclusion.

8. It cannot be said that the application cannot be filed at this stage. It is a well considered proposition that an application for appointment of Advocate Commissioner can be filed at any stage of the proceedings and as such, the grounds taken by the respondents of belated filing of this application needs no consideration.

9. As a result, the order dated 28.11.2014 passed in I.A. No.642 of 2014 in O.S.No.477 of 2010 on the file of the Additional District Munsif Court, Villupuram is set aside and the application is restored on the file of the learned Additional District Munsif, Villupuram, who shall appoint an Advocate Commissioner for measuring the suit properties with the help of a surveyor. Such an exercise of appointment shall be done within a period of 10 days from the date of receipt of this order.

10. At this juncture, learned counsel for the respondents submitted that though they had filed the written statement in the year 2010, the suit has been kept pending for a very long time. Since the suit has been initiated in the year 2010, it would be appropriate

to direct the Court below to complete the entire proceedings within a period of three (3) months from the date when the Advocate Commissioner files his report before the Court below.

11. In the light of the above discussion, the present Civil Revision Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/--
Assistant Registrar(CS IV)

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Sub Assistant Registrar

msv

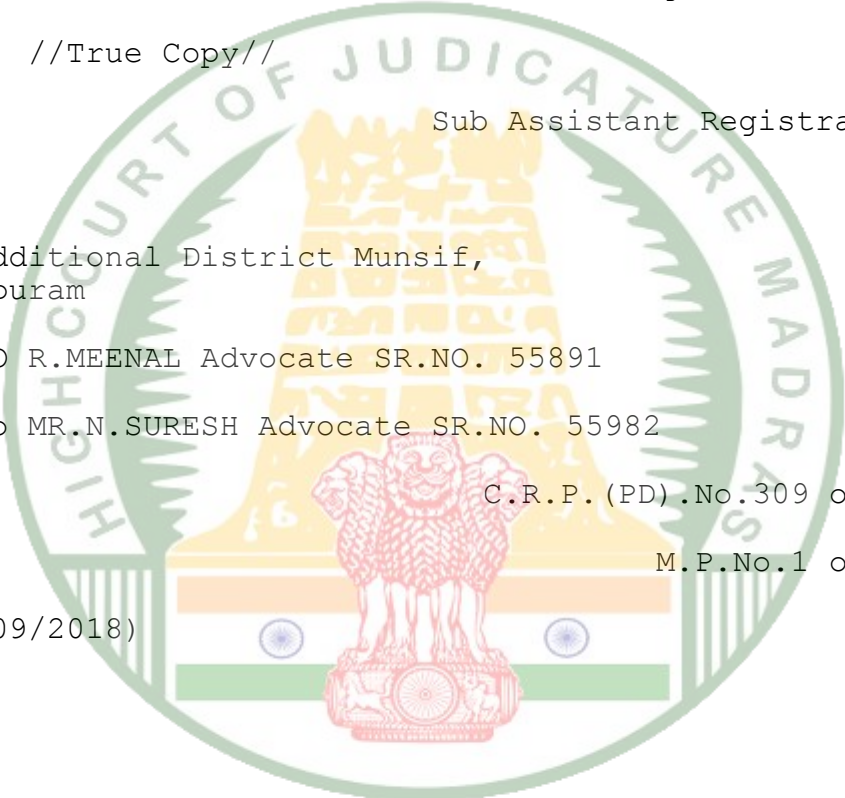
1.The Additional District Munsif,
villupuram

+1 CC TO R.MEENAL Advocate SR.NO. 55891

+1 cc to MR.N.SURESH Advocate SR.NO. 55982

C.R.P. (PD) .No.309 of 2015
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ASK(05/09/2018)



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