

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CRP (PD) No.4745 of 2011
and MP.No.1 of 2011

K.Thangamani

... Petitioner

Vs

N.Elumalai

... Respondent

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, against the judgment and decretal order dated 08.06.2011 passed in I.A.No.116 of 2011 in O.S.No.10 of 2006 on the file of the District Munsif Court at Ulundurpet, Villupuram District.

For Petitioner : Mr.V.Rajendran
For Respondent : No Appearance

ORDER

1.1. The Revision Petitioner is the defendant in O.S.No.10 of 2006 of the file of District Munsif Court, Ulundurpet, which the respondent herein has instituted for declaration of his title over the plaint B-Schedule property, which he describes in the suit as pathway.

1.2. The revision petitioner in his written statement has disputed the plaintiff's title over the said pathway. Pending trial, the plaintiff had taken up a commission in I.A.No.52 of 2006, and that the Commissioner had visited the property and had filed his report. According to the revision petitioner, that the said report contains several irregularities and hence he has preferred objections to the same and also an application in I.A.No.116 of

2011 to appoint a fresh commission. This I.A.No.116 of 2011 came to be dismissed by the trial Court and hence the petitioner has come forward with this petition.

2. Heard the learned counsel for the petitioner. The respondent did not appear though served with a notice.

3. The learned counsel for the petitioner submitted that based on the objections raised by him, the Commissioner has been cross-examined and in fitness of things, the trial Court when it chose to dismiss I.A.No.116 of 2011, ought to have given its opinion as to the quality of the Commissioner Report, available on record in the light of the objections raised by the petitioner and the quality of Commissioner's testimony. When the ground is set for deciding whether the Commissioner Report filed pursuant to orders in I.A.No.52 of 2006 should be set aside or not, the trial Court without addressing that issue, has over simplified its decision in I.A.No.116 of 2011 and dismissed the same. सत्यमेव जयते

4. On perusal of the documents, this Court finds that the Commissioner has been cross-examined only after the dismissal of I.A.No.116 of 2011. Therefore, prima facie as on the date on which I.A.No.116 of 2011 was dismissed, the ground for testing the quality of Commissioner Report has not yet been made. Therefore, this application in one sense is premature or in the alternative, the trial Court should have delayed passing the order in

5. It is a settled law that a fresh commission may not be issued till the report of the Commissioner already made available on record is set aside in the manner known to law. Inasmuch as the Commissioner has now been cross-examined, the trial Court is in a position to pass an order as to whether the said Commissioner Report should be impeached or set aside.

6. In the said circumstances, this Court directs the Principal District Munsif, Ulundurpet to decide as to whether the Commissioner Report dated 07.06.2007 has to be set aside, and depending on its outcome, it may either appoint the same Commissioner giving him such directions as are necessary, including those that are indicated in the objections of the revision petitioner to the Commissioner's report, or appoint a fresh commission to do the same. Since the suit is pending from 2006, the trial Court is directed to expedite the entire process and dispose of the suit on or before 31.10.2018.

7. The revision petition is accordingly disposed of. No costs. Consequently, connected miscellaneous petition is closed.

04.04.2018

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Index : Yes/No

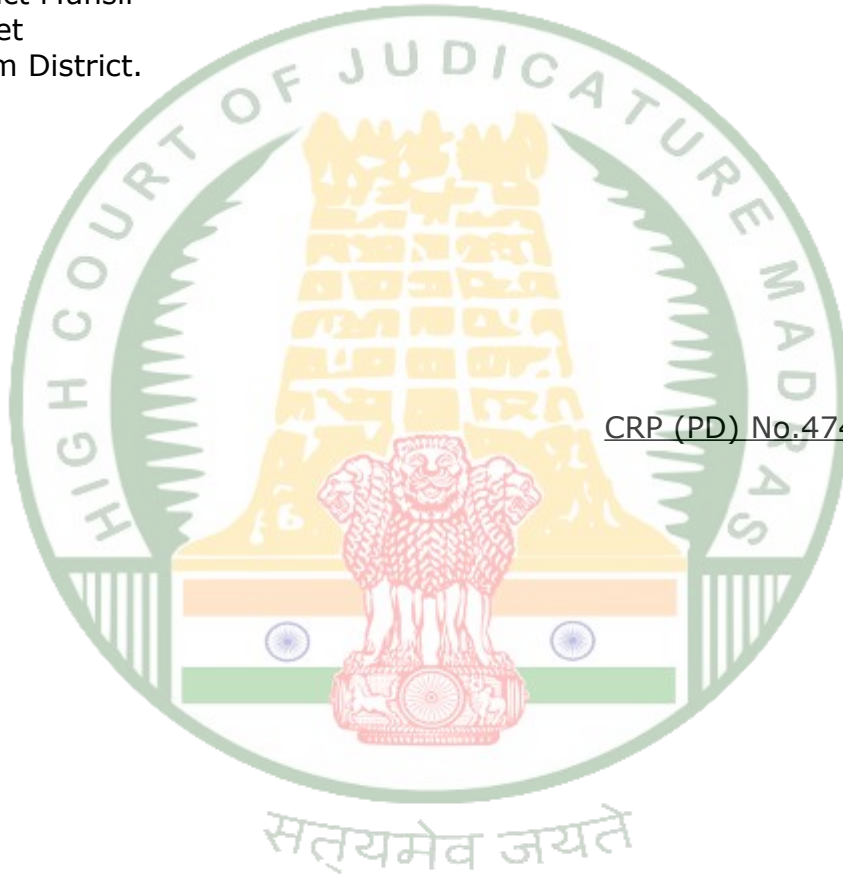
Speaking Order / Non-speaking Order

N.SESHASAYEE,J.,

ds

To:

The District Munsif
Ulundurpet
Villupuram District.



CRP (PD) No.4745 of 2011

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