

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD).No.674 of 2018
and CMP.No.3454 of 2018

K.R.Govindarajan (died)

K.R.G.Narayanan

.. Petitioners

Vs

1.P.Rajendran

2.P.Parthiban

3.P.Gonvindaraj

4.P.Rajagopal

5.P.Sundarajan

.. Respondents

PRAYER

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Civil Revision Petition filed under Article 227 of the
Constitution of India against the fair and decretal order dated 09.08.2017
made in IA.No.323 of 2011 in AS.No.24 of 2011 on the file of the Principal
Subordinate Judge, Villupuram.

For Petitioners : Mr.R.Arun Dattan

ORDER

According to the revision petitioner, the first revision petitioner has filed a suit in OS.No.40 of 2007 against the respondents herein for declaration that the plaintiffs family Trusteeship to maintain the suit temple and properties and permanent injunction. The respondents also filed a suit in OS.No.327 of 2005 for permanent injunction. Joint trial was conducted in both the suits and Judgment was pronounced on 15.12.2010. As against the Judgment and Decree, the revision petitioner has filed an appeal in AS.No.24 of 2011. In the aforesaid appeal, the revision petitioners have filed the instant application to appoint Advocate Commissioner to note down the physical features of the suit property along with the counsel of the revision petitioner with the help of the taluk surveyor. The said application was dismissed on the ground the application was filed at the stage of appeal. Hence, the revision petitioners have filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioners would submit that if the said application is allowed, no prejudice would be caused to the respondents. To ascertain the real position in the said

suit property, Advocate Commissioner has to be appointed and submit the report before the court. Therefore, the order of the court below is liable to be set aside.

3. Heard the learned counsel for the revision petitioners and perused the materials available on record.

4. By considering the aforesaid facts and circumstances and the submissions of the learned counsel for the revision petitioners, the revision petitioners have not stated any satisfactory reasons for appointment of Advocate Commissioner in the instant application. The court below has considered the decision of this Court in the case of *T.K.Krishnamoorthy Vs. Tamil Nadu Water and Drainage Board* reported in **(2006) 4 MLJ 626**, wherein this Court has held that Advocate Commissioner cannot be appointment to collect evidence. The revision petitioners have filed the present application at the stage of appeal suit and the suit is of the year 2007, the appeal has been filed in the year 2011. So, the belated application has been filed by the revision petitioner for seeking appointment of Advocate Commissioner to inspect the suit property and submit the report. Therefore, the court below has rightly dismissed the said application. Hence, there is no warrant to interfere with the order passed by the

court below and the Civil Revision Petition is liable to be dismissed.

5. The Civil Revision Petition is dismissed with above observations. Consequently, the connected miscellaneous petition is closed. No costs.

26.02.2018

Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

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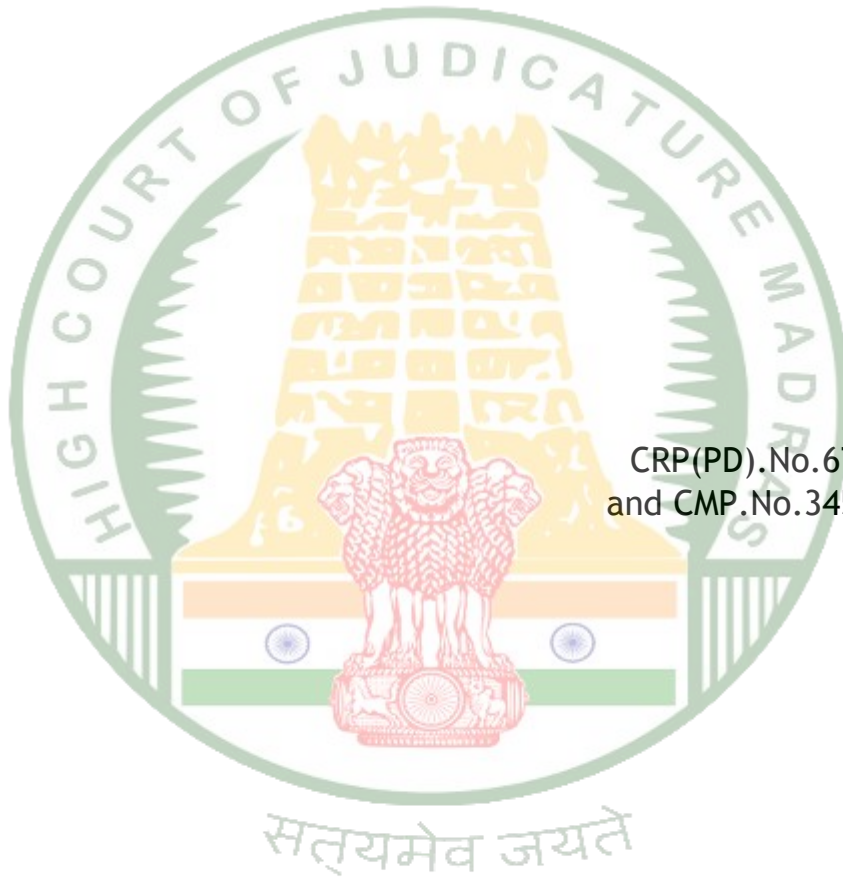
The Principal Subordinate Judge,
Villupuram.



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D. KRISHNAKUMAR J.,

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