

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2018

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

**C.R.P.(PD)No.940 of 2015**  
**and**  
**M.P.No. 1 of 2015**

K. Lingasamy ... Petitioner

Vs.

1. Valliyammal  
2. Shanmugasundaram  
3. Thangaraj ... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 22.12.2014 made in I.A.No.1479 of 2014 in O.S.No.334 of 2011 on the file of the District Munsif Court, Kangayam.

For Petitioner : Mr.M.Guruprasad

For Respondents : Mr. P.Valliappan

**ORDER**

The Civil Revision Petition is filed against the fair and decretal order dated 22.12.2014 made in I.A.No.1479 of 2014 in O.S.No.334 of 2011 on the file of the District Munsif Court, Kangayam.

2. The petitioner is plaintiff and respondents are the defendants in O.S.No.334 of 2011 on the file of the District Munsif Court, Kangayam. The petitioner filed said suit for declaration and permanent injunction. The third respondent filed written statement on 22.03.2012 and the same was adopted by the respondents 1 and 2 and are contesting the suit. Trial commenced. The petitioner filed present I.A.No.1479 of 2014 under Order XXVI Rule 9 and Section 151 CPC for appointment of an Advocate Commissioner to note down the physical features of the suit property and to file report and plan.

3. According to the petitioner, in the cross-examination, D.W.1 denied the existence of house, tank, cattle shed, bore well, pipeline under the ground etc. in the suit property and to prove the same, it is necessary for the appointment of Advocate Commissioner to note down the physical features of the suit property.

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4. The respondents filed counter affidavit and submitted that the petitioner earlier filed I.A.No.1779 of 2011 for appointment of Advocate Commissioner. The said application was dismissed and

the said order has become final. The petitioner is trying to collect evidence through the Advocate Commissioner.

5. Before the learned Judge, the petitioner did not let in oral evidence and marked six documents as Exs.P1 to P6. The respondents did not let in oral and documentary evidence.

6. The learned Judge, considering the averments made in the affidavit, counter affidavit, materials available on record and documents filed by the petitioner, dismissed the application holding that the Advocate Commissioner cannot be appointed for the reason that D.W.1 in his cross-examination denied the existence of house, tank, cattle shed, bore well, pipeline under the ground etc. in the suit property and report of the Advocate Commissioner cannot substitute the evidence let in by the respondents.

7. Against the said order of dismissal dated 22.12.2014 made in I.A.No.1479 of 2014, the present Civil Revision Petition is filed by the petitioner.

8. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

9. From the materials available on record and order of the learned Judge, it is seen that the petitioner is claiming declaration on the ground of oral partition between the petitioner and Nachimuthu Gounder, father of the respondents 2 and 3. According to the petitioner, he is in possession of the suit property, which was allotted to him in oral partition. He put up construction, dig bore well and laid pipe line under the ground to draw water from the common well. It is for the petitioner to prove all his contentions by letting in oral and documentary evidence. The Advocate Commissioner cannot be appointed to collect evidence on behalf of the parties to find out the possession. Further, earlier the petitioner filed I.A.No.1779 of 2011 for the very same relief and the same was dismissed holding that appointment of Advocate Commissioner is not necessary and petitioner has to prove his case by letting in evidence. The said order has become final, as the petitioner has not challenged the said order.

10. The learned Judge has considered all the aspects in proper perspective and dismissed the application by giving cogent and valid reason. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 22.12.2014.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

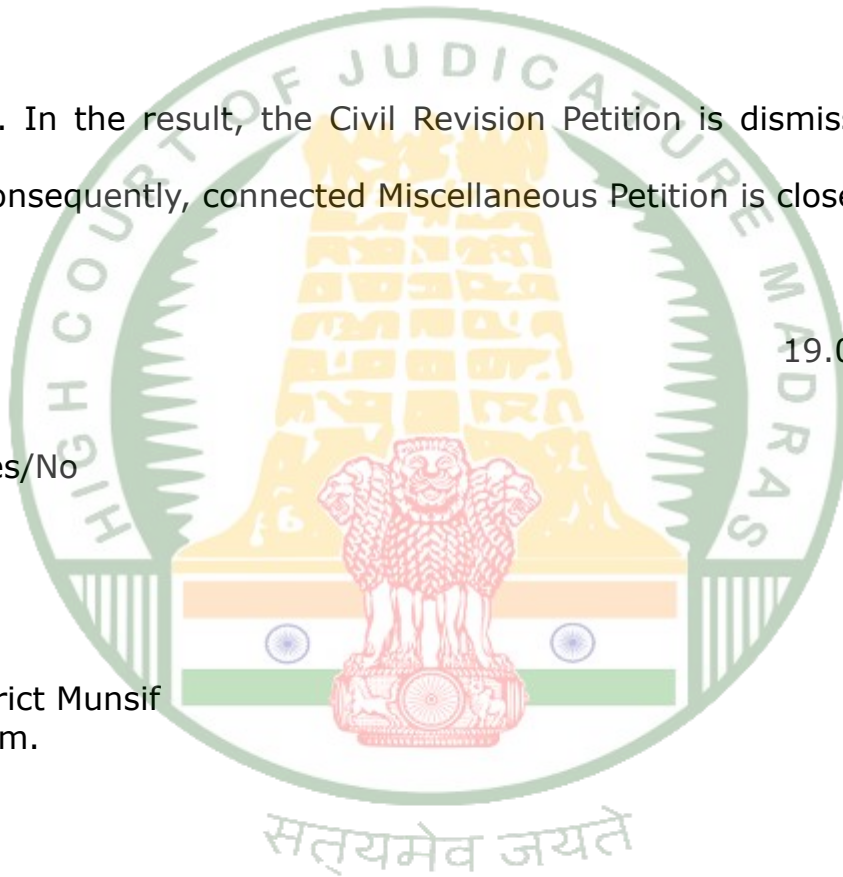
19.01.2018

Index:Yes/No

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To

The District Munsif  
Kangayam.



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**V.M.VELUMANI, J.**

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