

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No.88 of 2018

and

CMP. No.414 of 2018

S.Devagi

.. Petitioner

Vs

The Commissioner,
Vaniyambadi Municipality,
Vaniyambadi,
Vellore District.

.. Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.521 of 2017 in O.S. No.51 of 2015 on the file of learned Sub-ordinate Judge, Vaniyambadi, Vellore District dated 15.12.2017.

For Petitioner :Mr.Thiruvengadam

ORDER

This Civil Revision Petition is filed against the dismissal order made in I.A.No.521 of 2017 in O.S. No.51 of 2015 on the file of learned Sub-ordinate Judge, Vaniyambadi, Vellore District dated 15.12.2017.

2.The learned counsel for the petitioner would submit that the petitioner has filed the suit in O.S. No.51 of 2015 on the file of the learned Subordinate Judge, Vaniyambadi for declaration and permanent injunction. In the aforesaid suit, the petitioner has filed an application in I.A. No.213/16 for appointment of Advocate Commissioner and the same was ordered on 28.06.2017. As per the order passed by the Court below, the Advocate Commissioner inspected the property and submitted his report on 14.09.2017. The petitioner has filed an objection on the report, stating that it is a false diagrammatic explanation, Physical features and Geographical, showing the direction of the suit scheduled property and the same is without following the instructions of the Court. Therefore, the petitioner filed an application in I.A. No.521 of 2017 to appoint a new Advocate Commissioner in order to safeguard the petitioner's right. Without considering the objections and the materials, the Court below dismissed the said application. Challenging the order of the court below, the present revision petition is filed before this Court.

3. Considered the above said facts and submissions of the petitioner and perused the materials available on record. The petitioner has filed an Application in I.A. No.521 of 2017 in O.S. No.51 of 2015 for appointment of a new advocate Commissioner, with a direction to visit

the suit property along with a District Head Surveyor and other revenue officials, to measure the property with the title deed of the petitioner and note down the physical features of the suit property and to file his report and plan. The petitioner has filed an application in I.A. No.213 of 2016 previously, seeking to appoint an Advocate Commissioner for the same relief. Pursuant to the order issued by the Court below, the Advocate Commissioner has submitted his report. The petitioner has also filed an objection on the aforesaid report. While that being so, the present application to appoint a new Advocate Commissioner for the very same prayer has been filed, on the ground that the Advocate Commissioner has not followed the procedure.

4.Firstly, the present prayer in the application for appointment of a new Advocate Commissioner is not maintainable, since the petitioner has approached this Court, without seeking for an appropriate remedy in the application, before the court below. Admittedly, the petitioner has filed an objection in I.A. No.213 of 2016 in O.S. No.51 of 2015 on the report of the Advocate Commissioner before the Court below, which has been closed. Again, the petitioner cannot ask for appointment of a new Advocate Commissioner to measure the suit property. It is rightly

observed by the Court below, the petitioner had an opportunity to examine the Advocate Commissioner, as per the procedure contemplated under the provisions of law, at the time of trial. Hence, the order of the Court below is perfectly valid in law by dismissing the said application. Therefore, there is no warrant to interfere with the order passed by the Court below.

5. In view of the above facts and circumstances, the aforesaid Civil Revision Petition is dismissed. No order as to costs.

22.01.2018

Index: Yes/ No

Internet : Yes/No

Speaking Order/Non Speaking Order

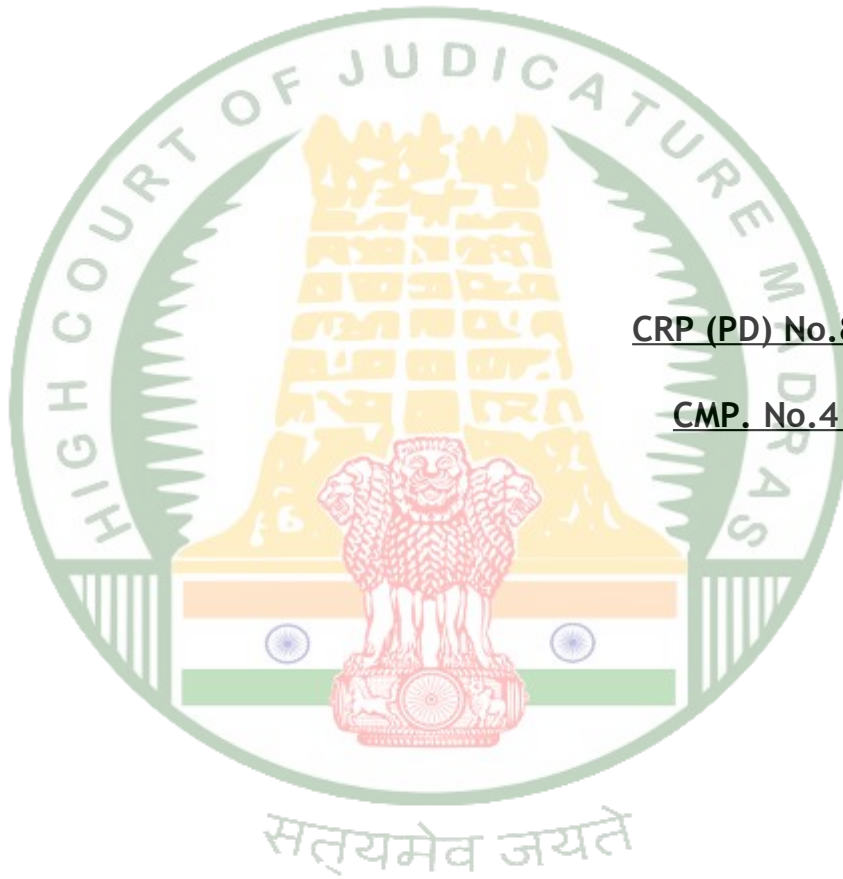
RKP

To

The learned Subordinate Judge,
Vaniyambadi.

D. KRISHNAKUMAR J.,

RKP



CRP (PD) No.88 of 2018
and
CMP. No.414 of 2018

WEB COPY

22.01.2018