

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2018

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CRP (NPD) No. 2483 of 2004
and C.M.P.No.18681 of 2004

Tamil Nadu Harijan Sevak Sangh,
By its President, S.Pandian.

...Petitioner

vs.

1.Arulmigu Kamachiamman Koil
of 24 Manai Telegu Chettiar,
Nehru Street, represented by
its President, R.K.Ponraj.

2.Udumalpet Sarvodhya Sangh,
represented by its Secretary,
M.Thirugnanasambandham

...Respondents

*R2 Secretary name substituted as M.Thirugnanasambandham
instead of M.Thirunavukkarasu vide Court Order dt.15.02.2018
made in C.M.P.No.942/12 in CRP No.2483 of 2004

Prayer: Civil Revision Petition filed under Article 227 of the
Constitution of India, against the Order and Decretal Order
passed by the learned Subordinate Judge, Udumalpet, in I.A.16
of 2004 in A.S.No.2 of 2004, dated 11.8.2004, and prays that the
same may kindly be set aside.

For Petitioner : Mr.B.Arvind Sre vaisa
for Mr.T.V.Krishnamachari

For R1 : Mr.P.Jagadeesan

For R2 : NA

ORDER

The instant CRP has been filed by the petitioner against the
order dated 11.8.2004 in IA No.16 of 2004 in AS No.2 of 2004
passed by the learned Subordinate Judge, Udumalpet dismissing
the application filed by the petitioner for re-appointment of

Advocate Commissioner to note down the physical features of the suit schedule property.

2.It is the case of the petitioner that they had filed two interlocutory applications IA No.16 of 2004 and IA No.17 of 2004 in AS No.2 of 2004. IA No.17 of 2004 was filed for receiving documents and IA No.16 of 2004 was filed seeking re-appointment of an Advocate Commissioner due to the availability of certain new vital documents which were not available during the earlier inspection by the Advocate Commissioner during the course of the proceedings in the suit.

3.IA No.17 of 2004 in AS No.2 of 2004 was filed under Order 41 Rule 27 of CPC, seeking to accept the new vital documents and it was allowed by the Lower Appellate Court. But IA No.16 of 2004 filed by the petitioner seeking for re-appointment of Advocate Commissioner to note down the physical features of the suit schedule property was dismissed by the Lower Appellate Court on 11.8.2004. Aggrieved by the Order of dismissal, the instant Civil Revision Petition has been filed.

4.The Lower Appellate Court dismissed IA No.16 of 2004, on the ground that the petitioner has filed only a bare injunction suit in OS No.96 of 1995 and the Advocate Commissioner appointed before the Trial Court has already filed a report, which is on record and has also been duly considered by the Trial Court in its judgement.

5.Heard Mr.B.Arvind Sre vaisa, learned counsel for the petitioner and Mr.P.Jagadeesan, learned counsel for the respondent No.1.

6.The learned counsel for the petitioner submits the vital documents to establish the encroachment of the suit schedule property by the respondents, were made available to the petitioner only after the filing of AS No.2 of 2004. Therefore, according to him, the Advocate Commissioner has to revisit the suit schedule property once again and submit a fresh report after considering the new documents. The learned counsel for the petitioner also submitted that the Lower Appellate Court having allowed the Order 41 Rule 27 CPC application, it should have allowed the application filed for re-appointment of Advocate Commissioner also. Instead, the Lower Appellate Court has erroneously dismissed the said application.

7.Per contra, the learned counsel for the respondent submits that the petitioner did not raise any objection to the Advocate Commissioner's report filed before the Trial Court. He also submitted that the petitioner while preferring an appeal in AS No.2 of 2004 has also relied upon the Advocates Commissioner's

report in support of their case which was filed before the Trial Court. The learned counsel for the respondent drew attention of this Court to ground Nos. 4, 5 and 7 raised by the petitioner in AS No.2 of 2004 and submitted that the Lower Appellate Court has rightly dismissed IA No.16 of 2004 in AS No.2 of 2004.

8.The Lower Appellate Court has already allowed the application namely, IA No.17 of 2004 filed by the petitioner under Order 41 Rule 27 of CPC, to accept the additional documents which according to the petitioner is vital for establishing the encroachments of the suit schedule property by the respondents.

9.As pointed out by the learned counsel for the respondents, the petitioner has also relied upon and supported the Advocate Commissioner's report for the purpose of challenging the judgement and decree of the Trial Court. Further, the petitioner had also not filed any objection to the Advocate Commissioner's report which is on record before the Trial Court.

10.The additional documents filed under Order 41 Rule 27 CPC have also been taken on file by the Lower Appellate Court. Therefore, there is no necessity for re-appointment of Advocate Commissioner to inspect the physical features of the suit schedule property once again.

11.In such circumstances, this Court is of the considered view that the order of the Lower Appellate Court does not call for any interference.

12.Accordingly, the instant CRP shall stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

सत्यमेव जयते Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

pam

To

1)The Subordinate Judge,
Udumalapet.

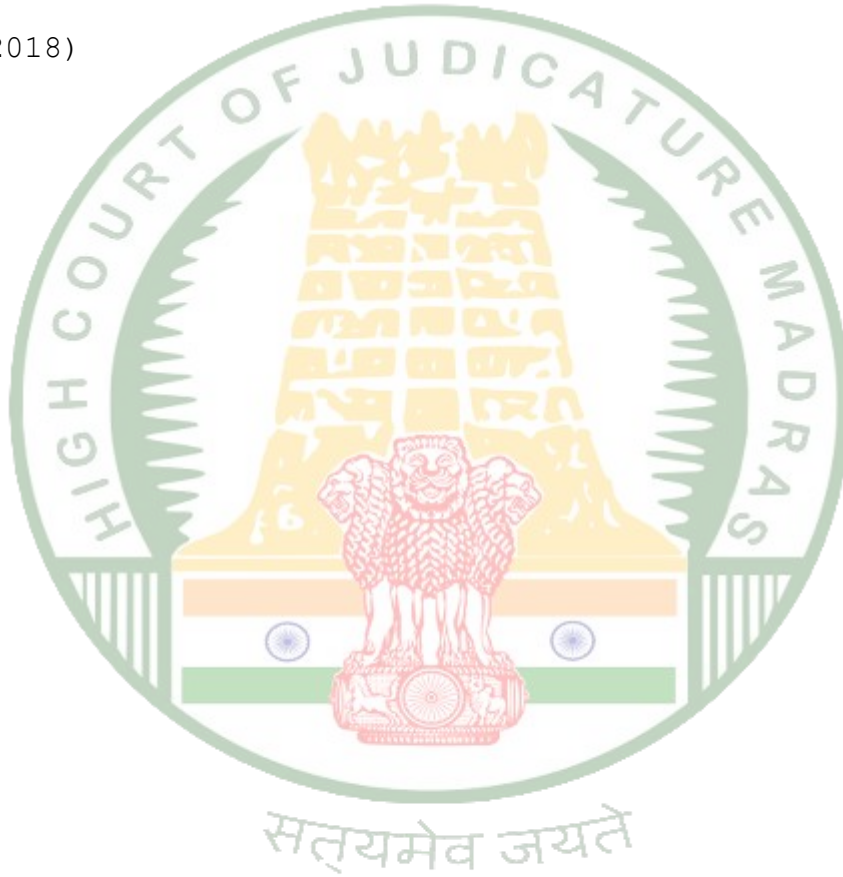
2.The Record Keeper,
VR Section, High Court,
Madras.

+1cc to Mr.TV.Krishnamachari, Advocate SR.No.11987

+1cc to Mr.P.Jagadeesan, Advocate SR.No.11565

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VGII (CO)
GN (20/03/2018)



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