

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.1956 of 2010
and M.P.No.1 of 2010

Kuppan (Died)

1.Sundari

2.Devaki

3.Sasikala

4.Jeeva

5.Selvakumar

6.Thirisanku

7.Mahalakshmi

... Petitioners

Vs.

Ranganathan (Died)

1.Muniammal

2.Nagarajan

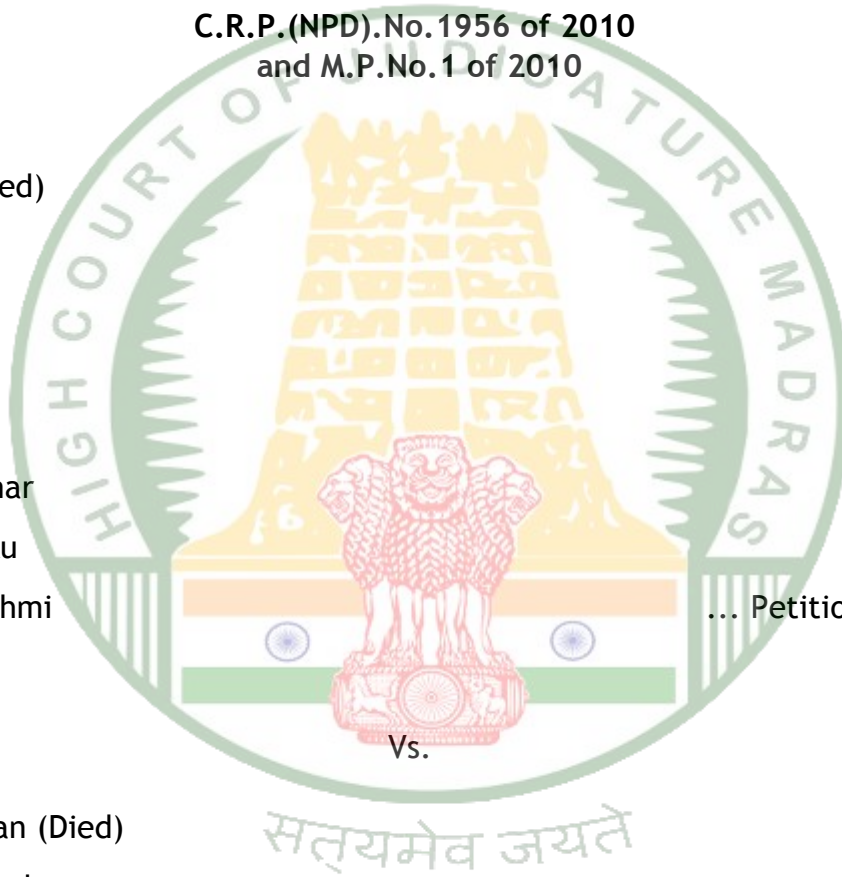
3.Rani

4.Karpagam

5.Vadivelu

6.The Executive Officer,
Perunkalathur Town Panchayat,
Perunkalathur, Kancheepuram District.

... Respondents



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Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 22.03.2010 passed by the Subordinate Court, Tambaram in I.A.No.22 of 2008 in A.S.No.55 of 2008.

For Petitioners : Mr.M.Chinnasamy

For Respondents : Mr.T.Thiagarajan (R1 To R3)

Mrs.R.Revathy (R6)

R5 - no appearance

R4 - not ready in notice

ORDER

Challenging the fair and final order passed in I.A.No.22 of 2008 in A.S.No.55 of 2008 on the file of the Subordinate Court, Tambaram (originally A.S.No.80 of 2003 on the file of the Subordinate Court, Chengalpet) the defendants in O.S.No.2862 of 1993 on the file of the District Munsif Court, Tambaram, have filed the above Civil Revision Petition.

2.The plaintiffs filed the suit in O.S.No. 2862 of 1993 for mandatory injunction and recovery of possession from the defendants. Before the trial Court, at the instance of the plaintiffs, an Advocate Commissioner was appointed and the Advocate Commissioner also filed his report. Admittedly, the defendants did not file their objections to the Commissioner's report. The trial Court, taking into consideration the oral and documentary evidences,

decreed the suit. Aggrieved over the same, the defendants preferred an appeal in A.S.No.80 of 2003 on the file of the Subordinate Court, Chengalpet (re-numbered as A.S.No.55 of 2008 on the file of the Subordinate Court, Tambaram). In the said appeal, the defendants took out an application in I.A.No.22 of 2008 seeking for appointment of an Advocate Commissioner to note down the physical features.

3.It is settled position that an Advocate Commissioner cannot give a finding with regard to the possession of the parties. The plaintiffs have filed the suit for recovery of possession and an Advocate Commissioner cannot give a finding as to the possession of the parties. That apart, an Advocate Commissioner was appointed before the trial Court and the Commissioner's report is also very much available on record for consideration of the Appellate Court. It is also settled position that the parties to the suit cannot collect evidence through the Advocate Commissioner to establish their case.

4.In such view of the matter, the Lower Appellate Court has rightly dismissed the application filed by the defendants. I do not find any error or irregularity in the order passed by the Lower Appellate Court. The Civil Revision Petition is devoid of merits and the same is dismissed.

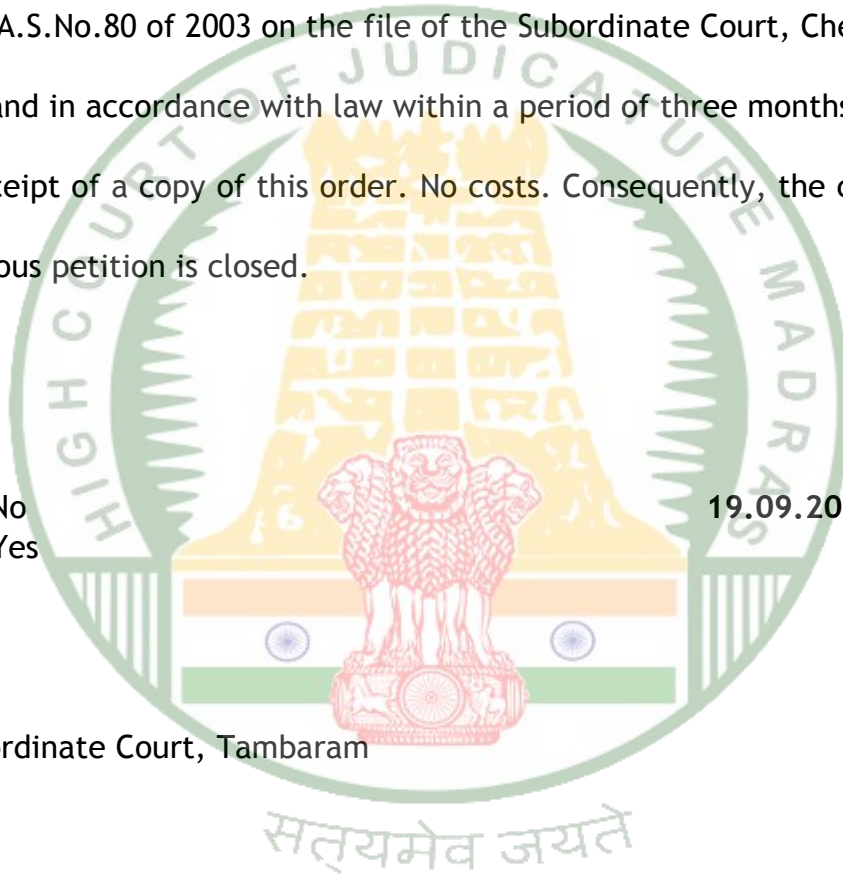
5.Since the appeal is pending from the year 2003, I direct the Subordinate Judge, Tambaram to dispose of the appeal in A.S.No.55 of 2008 (originally A.S.No.80 of 2003 on the file of the Subordinate Court, Chengalpet), on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

19.09.2019

To

1.The Subordinate Court, Tambaram

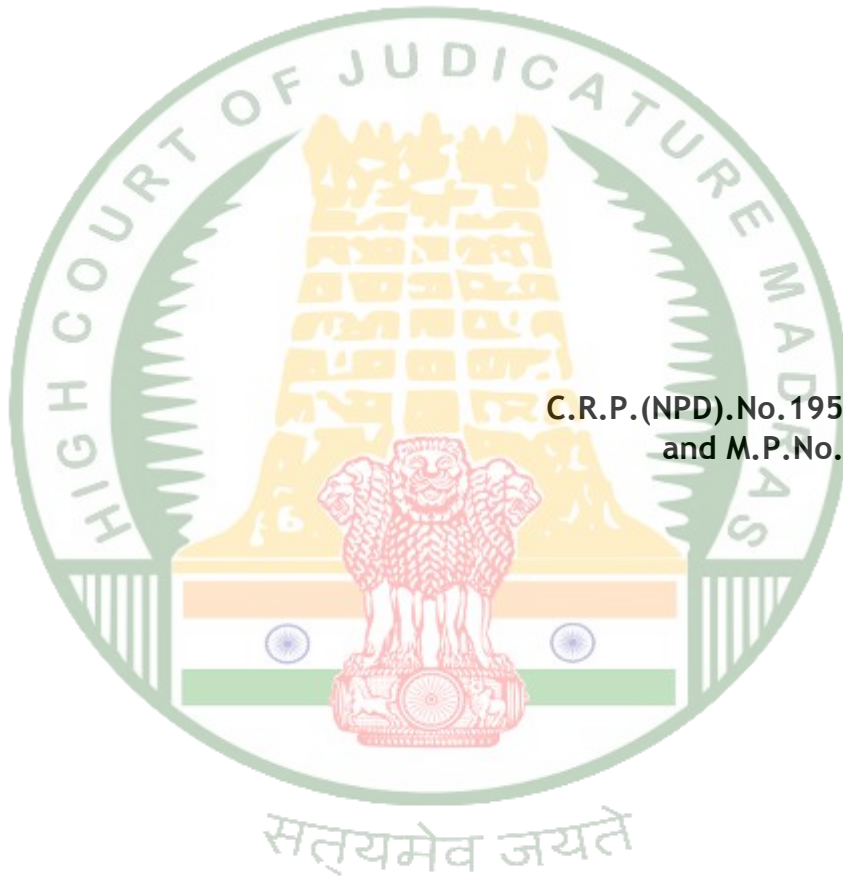


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M.DURAISWAMY,J.

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