

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.466 of 2019

and

C.M.P.No.3105 of 2019

1.Sivaprakash
2.N.Balakrishnan

... Petitioners

-VS-

1.K.K.NatchimuthuGounder
2.N.Kandasamy
3.N.M.PerumalGounder
4.N.R.Natarajan

... Respondents

PRAYER:

Civil Revision Petition filed under Section 115 of Code of Civil Procedure, against the Order passed in E.A.No.79 of 2018 in E.A.No.118 of 2016 in E.P.No.132 of 2015 in O.S.No.99 of 2011 on the file of the Subordinate Judge, Gobichettipalayam.

For Petitioners : Mr.V.P.K.Gowtham

ORDER

The Revision Petitioners/3rd party Objectors have filed a claim application in E.A.No.118 of 2016 in E.P.No.132 of 2015 in O.S.No.99 of 2011. In the said claim application, they have filed an application in E.A.No.79 of 2018 to appoint an Advocate Commissioner to note down the physical features of the property in question.

2. In the affidavit filed in support of the application, the Revision Petitioners have stated that the respondents 1 and 2 are the Decree Holders and respondents 3 and 4 are the Judgment Debtors in O.S.No.99 of 2011. The Suit was filed for partition and separate possession of the property in question and a final decree was passed on 31.03.2015, allotting specific portions of the suit property to the Decree Holders and Judgment Debtors.

3. Thereafter, the Decree Holders filed an Execution Application in E.A.No.132 of 2015 for taking possession of the shares allotted to them. When they proceeded to take possession of the property allotted to them, there was an objection raised by the revision petitioners/objectors and thereafter, the Revision Petitioners/Objectors have filed a claim application under Order 21 Rule 97 and 99 of the Code of Civil Procedure objecting delivery of possession to an extent of 15 cents in E.A.No.118 of 2016.

4. During the pendency of the said application, the Revision Petitioners/Objectors have taken out the impugned application on the ground that they were in possession of the property in question and constructed houses and enjoying the same by getting electricity service connection and in fact, the Revision

Petitioners are seeking to appoint an Advocate Commissioner to note down as to who is in possession of the property in question.

5. It is a well established rule of law that an Advocate Commissioner cannot be used as a substitute for finding out as to who is in actual possession of the suit property. The lower Court has rightly rejected the Application in E.A.No.79 of 2018 in E.A.No.118 of 2016 in E.P.No.132 of 2015 in O.S.No.99 of 2011. Therefore, I do not find any infirmity in the order passed in E.A.No.79 of 2018 in E.A.No.118 of 2016 in E.P.No.132 of 2015 in O.S.No.99 of 2011.

6. In the result, **the Civil Revision Petition stands dismissed.** No costs. Consequently, the connected Civil Miscellaneous Petition is also closed.

सत्यमेव जयते

13.02.2019

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Index: Yes/No

Internet : Yes / No

Speaking/non-speaking order

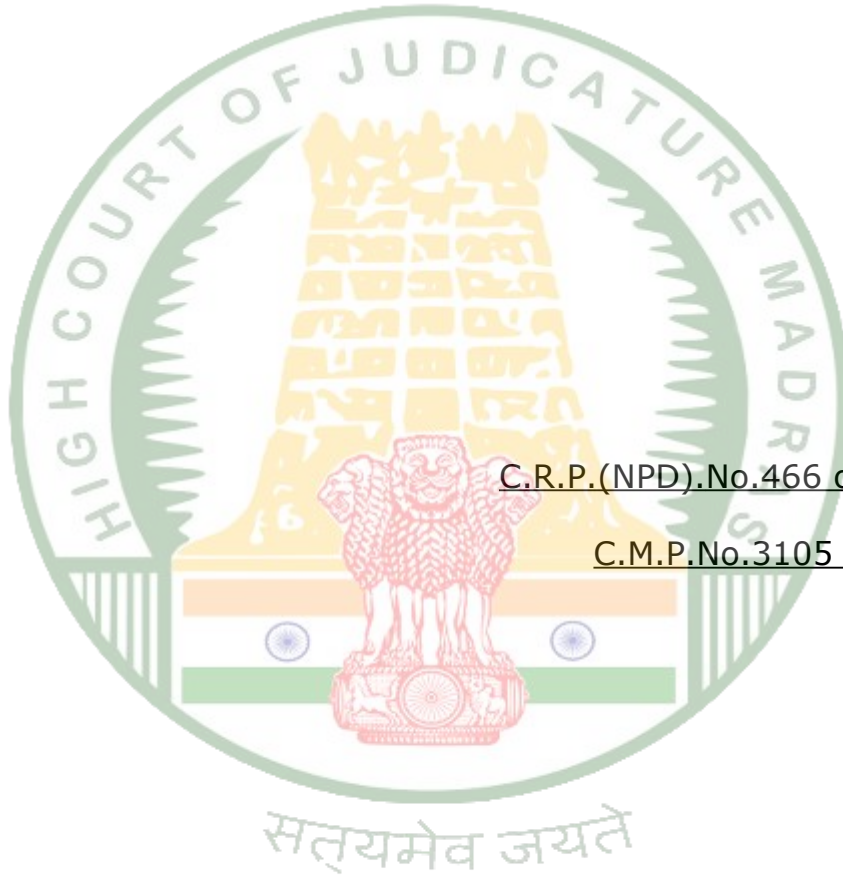
To

The Subordinate Judge,

<http://www.judis.nic.in> Gobichettipalayam.

P.T.ASHA.J.,

tsg



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