

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. PD 4213 of 2015

and

M.P. 1 of 2015

K.Duraisamy

... Petitioner

Versus

1. V.Palanisamy

2. P.Arumugam

3. P.Sagadevan

... Respondents

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the fair and final order dated 01.09.2015 made in I.A.No.357 of 2015 in O.S.No.477 of 1999, on the file of Principal District Munsif Court, Salem.

For Petitioner : Mr.T.Murugamanickam

For respondents : Mr.V.Bhiman

ORDER

This Civil Revision Petition has been filed against the order dismissing the application filed under Order 26 Rule 9 of C.P.C.

for appointment of Advocate Commissioner.

2. The petitioner is the defendant in the Suit. The respondents/plaintiffs filed a suit for declaration declaring his title over the suit schedule property, and also for permanent injunction restraining the respondent from interfering with their possession and enjoyment of the suit property. Earlier, the Suit was dismissed by the Trial Court. Challenging the same, the plaintiffs have filed an appeal, and the lower appellate court remanded the matter back to the Trial Court for fresh disposal. After remand, the plaintiffs have filed an application for appointment of Advocate Commissioner. Pursuant to the same, an Advocate Commissioner was appointed, and he has also filed his report. Now, finding fault with the report filed by the Advocate Commissioner, the petitioner/defendant has filed the present application seeking for appointment of new Advocate Commissioner to measure the property with the help of a qualified survey higher than Firka Surveyor. That application came to be dismissed. Now, challenging the same, the present Civil Revision Petition has been filed.

3. I have heard and considered rival submissions made by

learned counsel appearing for petitioner as well as learned counsel appearing for respondents, and perused the records carefully.

4. Earlier, the Suit was dismissed, however, on appeal, the lower Appellate Court remanded the matter back to the Trial Court for fresh disposal. After remand, the respondents/plaintiffs, have filed an application for appointment of Advocate Commissioner. Pursuant to the same, a Advocate Commissioner was also appointed. While appointing the Advocate Commissioner, the petitioner has raised objection regarding the appointment of retired Government Surveyor for measuring the property, that objection has been rejected on the ground that, there is no specific direction by the lower appellate court to appoint a particular person as a Commissioner in the order of remand. That order was not challenged by the petitioner. That apart, if the petitioner has any grievance over the report filed by the commissioner, the only option open to the petitioner to ask for re-issuance of warrant to the Advocate Commissioner to measure the property. But, without doing so, the petitioner came up with fresh application to appoint the

Commissioner to make local inspection. Considering all those circumstances, the Trial Court has dismissed the application. I find no illegality or irregularity in the order passed by the court below, and I find no merit in this Civil Revision Petition.

5. However, it is open to the petitioner to file his objection for the report filed by the Advocate Commissioner, and any such objection is filed, the Trial Court is directed to consider the objection, and proceed with the suit, and dispose of the same within a period of three months from the date of receipt of the copy of this order. Both the parties are directed to co-operate with the trial.

6. Accordingly, the present Civil Revision Petition stands dismissed with the above direction. No costs. Consequently, the connected Miscellaneous Petition is closed.

12.12.2019

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

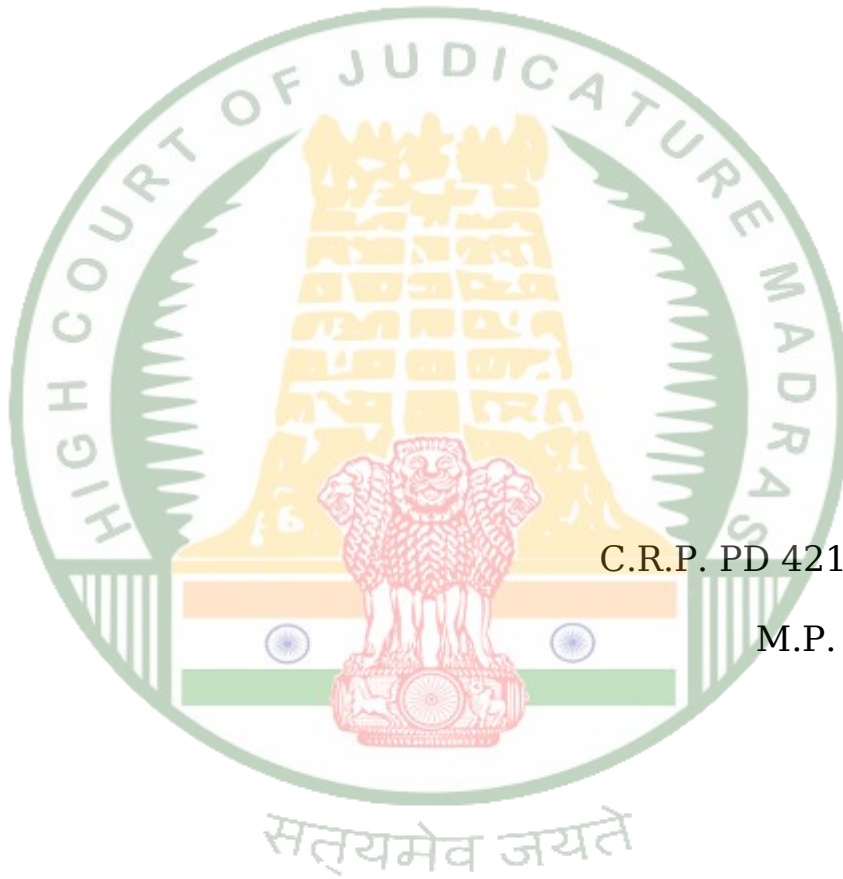
Principal District Judge,

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Principal District Munsif Court,
Salem.

V.BHARATHIDASAN,J.

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