

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.766 of 2013 and
M.P.No.1 of 2013

1. K. Gnanadurai
2. G.Balasundaram
3. M. Jayaprakash
4. J. Nimmi

... Petitioners

G. Janarthanam

V.

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the judgment and decree dated 18.10.2012 made in I.A.No.440 of 2011 in O.S.No.40 of 2009 on the file of the District Munsif Judge, Sholinghur, Vellore District.

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For Petitioners : Mr. N. Ilayaraja

For Respondent : Not Ready in Notice

ORDER

The petitioners have filed the above Civil Revision Petition, challenging the fair and final order passed in I.A.No.440 of 2011 in O.S.No.40 of 2009 on the file of the District Munsif Court, Sholinghur, Vellore District.

2. The respondent-plaintiff filed the suit in O.S.No.40 of 2009 for declaration and permanent injunction. The defendants filed their written statement and are contesting the suit. In the said suit, the defendants took out an application in I.A.No.440 of 2011 seeking for appointment of an Advocate Commissioner to measure their property and the suit property.

3. It is pertinent to note that earlier, an Advocate Commissioner was appointed, by order dated 04.03.2009 in I.A.No.58 of 2009, who had inspected the suit property along with the Taluk Surveyor and also filed his report.

4. The learned counsel appearing for the petitioners submitted that the petitioners-defendants have already filed their objections to the earlier Commissioner's report.

5. The Trial court, taking into consideration the case of both the parties, dismissed the application finding that without scraping the earlier Commissioner's report, the 2nd Commissioner cannot be appointed. The reasoning given by the Trial Court is perfectly correct.

6. It is settled position that the burden of proof lies on the plaintiff. The parties to the suit should establish their case by adducing oral and documentary evidences.

7. In the present case, the plaintiff has to establish his right in respect of the suit property. Therefore, without scraping the earlier Commissioner's report, the 2nd Commissioner cannot be appointed.

8. In these circumstances, I do not find any error or irregularity in the order passed by the Trial Court. The Civil Revision

Petition is devoid of merits and is liable to be dismissed. Since the defendants have already filed their objections to the Advocate Commissioner's report, I direct the District Munsif Court, Sholinghur, to dispose of the suit in O.S.No.40 of 2009, on merits and in accordance with law, after taking into consideration the Advocate Commissioner's report as well as the objections filed by the defendants. Since the suit is pending from the year 2009, I direct the District Munsif Court, Sholinghur, to dispose of the suit in O.S.No.40 of 2009, as expeditiously as possible.

With these observations, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

25.09.2019

Index : Yes / No

Speaking order / Non Speaking Order

Rj

To

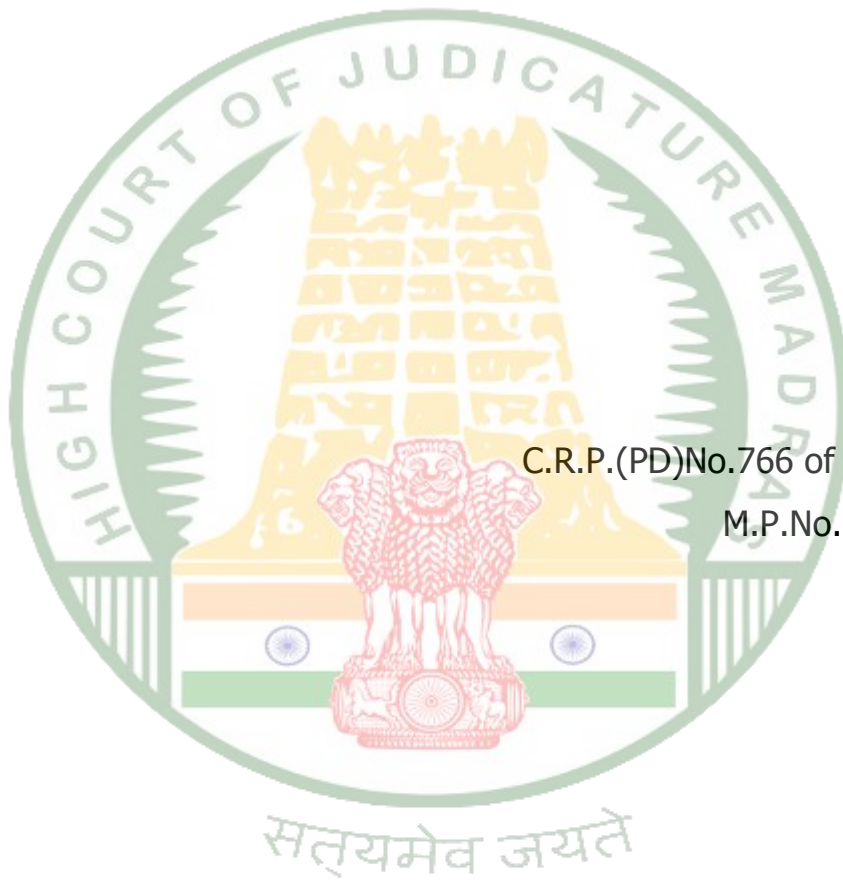
The District Munsif Court,
Sholinghur,
Vellore District.

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M.DURAI SWAMY, J.

Rj



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