

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2019

CORAM

THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(PD).Nos.1531 & 1532 of 2019

and

C.M.P.No.9995 of 2019

M.Govindan

..Petitioner/Plaintiff
in both CRPs

Vs

S.G.Afzal

..Respondent/Defendant
in both CRPs

COMMON PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 28.01.2019 made in I.A.Nos. 749, 750 of 2018 in O.S.No.94 of 2013, on the file of the learned District Munsif's Court, Tambaram.

For Petitioner : Mr.N.Manokaran

ORDER

The above Civil Revision Petitions are filed challenging the order passed by the learned District Munsif Court, Tambaram in I.A.Nos. 749, 750 of 2018 in O.S.No. 94 of 2018, these applications were filed by the revision petitioner/plaintiff to reopen the case for the examination of the Advocate

Commissioner. The only reason that has been given in the affidavit filed in support of the said petitions is as follows:

"On perusal of the records, it was found that the Commissioner who was appointed has not been examined to facilitate me to rely and ascertain and mark the report of the Commissioner accompanied with the surveyor to have better adjudication and appreciation of the facts and circumstances of the case.

4.Hence, I have been advised to file the above application seeking for examination of Advocate Commissioner for reopening the above case for the purpose of cross examination. If the Commissioner is not examined, I will be put to heavy loss and injury but on the other hand the respondent/defendant will not in any way prejudice in cross examining the Commissioner and mark the report filed by the Commissioner."

2 The said application was objected by the respondent/defendant stating that the commissioner was examined on the basis of the report and that there was no necessity to reopen the evidence for re-freshing the Advocate Commissioner memory. Since the Advocate Commissioner has no confusion about the property he has inspected. The learned

District Munsif, Tambaram by her order dated 28.01.2019 was pleased to dismiss the said application. Challenging the same revision petitioner/plaintiff is before this Court.

3 Heard Mr.M.Govindan, learned counsel appearing on behalf of the revision petitioner.

4 From a perusal of the order it is seen that the Advocate Commissioner was examined on 17.04.2017 and the report and plan marked as Exs:C1 and C2 respectively. The petitioner had made submission that he had no cross examination and that he did not want to cross examine the Advocate Commissioner and thereafter now when the matter is listed for arguments, the present petition has been filed. The reasons given in the affidavit does not show any reason whatsoever for reopening the evidence for once again examining the Advocate Commissioner. The only reason that has been given is that the Advocate Commissioner has not been examined and to therefore have a better adjudication and appreciate of the facts and circumstances, view of this Court is absolutely false. The revision petitioner who had voluntarily

stated that he did not want to cross-examine the Advocate Commissioner now at this late stage has come forward with the petition subject matter of the revision. The Court below had rightly dismissed the said application.

5 In the result, these Civil Revision Petitions stands dismissed and in I.A.Nos. 749, 750 of 2018 in O.S.No.94 of 2013, by the District Munsif's Court, Tambaram, dated 28.01.2019 is confirmed. No costs. Consequently, connected miscellaneous petition is also closed.

dua

26.04.2019

Index: Yes/No
Internet: Yes/No
Speaking order / Non-speaking order

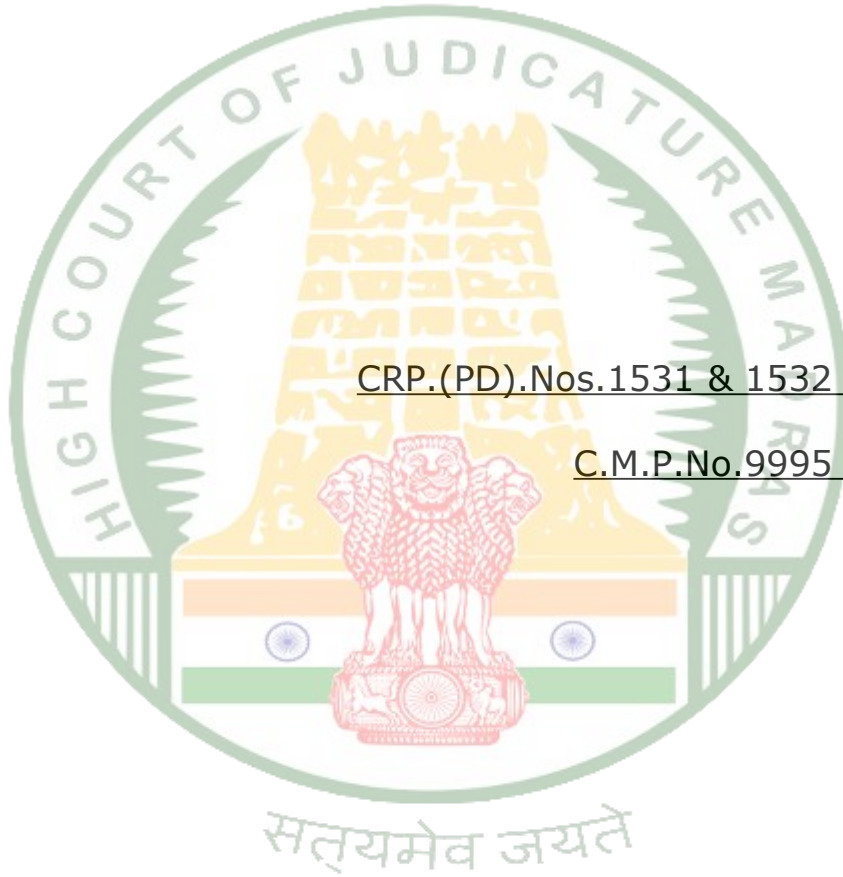
Note: Issue order copy on 29.04.2019

To

The District Munsif Court,
Tambaram.

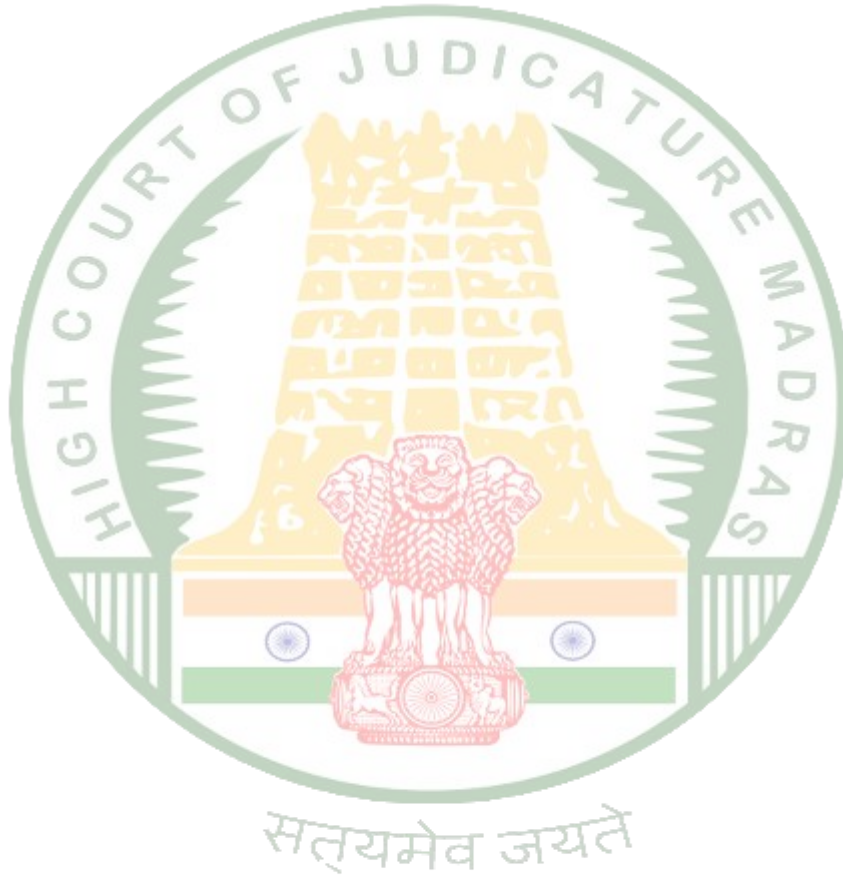
P.T.ASHA, J.

dua



CRP.(PD).Nos.1531 & 1532 of 2019
and
C.M.P.No.9995 of 2019

WEB COPY 26.04.2019



WEB COPY