

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.11.2019

PRONOUNCED ON : 21.11.2019

CORAM

THE HONOURABLE Mr. JUSTICE **R.PONGIAPPAN**

C.R.P.PD.No.3647 of 2014
and M.P.No.1 of 2014

D.Krishnan(died)

1. K.Amsaveni
2. K.Selvam
3. K.Sekar
4. G.Amudha
5. M.Mahalakshmi
6. P.Latha
7. P.Jayanthi
8. M.Jaya

... Petitioners

Vs

1. L.Ravanammal (died)
2. Padamalakashmi

R-2 has been brought on record as
legal heir of the deceased R-1 viz.,
L.Ravanammal vide order dated
18.10.2019 in C.R.P.(PD)3647 of 2014
and as per memo dated 04.10.2019

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 30.04.2014 made in M.P.No.2956 of 2012 in M.P.No.645 of 1991 in Ejt. Suit No.26 of 1991 on the file of the III Court of Small Causes, Chennai in scrapping Suo Motto the report filed by the Advocate Commissioner.

For Petitioners : Mr.Rajarajan
For Mr.D.Rajasekar
For Respondents
For R1 : Died
For R2 : No appearance

ORDER

Challenging the order dated 30.04.2014 made in M.P.No.2956 of 2012 in M.P.No.645 of 1991 in Ejt. Suit No.26 of 1991 on the file of the III Court of Small Causes, Chennai, the petitioners, who are the legal heirs of the deceased sole defendant in the said suit, filed this Civil Revision Petition and prayed to set aside the above said impugned order and to restore the report dated 14.11.2000, filed by the Advocate Commissioner.

2. Initially, the respondents in this Civil Revision Petition filed an Ejectment Suit in Ejt.S.No. 26 of 1991 as against one deceased D.Krishnan. During the pendency of the suit, the said D.Krishnan filed an application in M.P.No.645 of 1991, to direct the respondents/ plaintiffs to sell the petition schedule mentioned land for a price to be fixed by the Court below. In the said application, earlier one Manoharan S.Sundaram was appointed as an Advocate Commissioner and he had filed his report on 14.11.2000, by saying that entire area of the house is necessary for proper enjoyment. On the other hand he has not fixed the

value of the suit property.

3. Thereafter, the learned Presiding Officer, III Court of Small Causes, Chennai, by an order dated 31.07.2008, appointed one V.Govind, as an Advocate Commissioner to ascertain the market value of the suit property and directed to file his report on or before 01.09.2008. Though various letters have sent to the said Advocate Commissioner, he has not conducted any enquiry with regard to the market value of the suit property. Finally by an order dated 05.09.2012, he was asked to comply the direction mentioned in the warrant and directed to file his report before the Court on 21.09.2012. Though sufficient efforts were made, the Advocate Commissioner has not conducted any enquiry and submitted his report.

4. Hence the petitioners, who are legal heirs of the deceased sole defendant D.Krishnan, moved an application in M.P.No.2956 of 2012, to issue direction to the said Advocate Commissioner to refund the remuneration of Rs.3000/- which was paid to him and to appoint new Advocate Commissioner for the same purpose. The learned Presiding Officer, III Court of Small Cause, Chennai, after affording opportunities to the parties concerned, by an order dated 30.04.2014, scrapped the report filed by the earlier Advocate Commissioner suomotu without any reference. Aggrieved over the same the

petitioners are before this Court with the present Civil Revision Petition.

5. Today when this petition is taken up for hearing, the learned counsel appearing for the petitioners is present and made a submission that in the report filed by the earlier Advocate Commissioner, he has stated that entire area of the house is necessary for proper enjoyment, in view of the fact that three families residing in the suit property, it is not convenient for residential purpose. Further in the said report, he has stated that the property now under dispute is undividable and hence the sale of the property is the only remedy to the plaintiff. Only in the said circumstances, for ascertaining the market value of the property, the Advocate Commissioner was appointed, but in spite of so many efforts taken by the petitioners, he has not co-operated with the petitioners. Therefore, the petitioners have filed this present application to appoint the new Advocate Commissioner. In the said circumstances, scrapping the earlier report suomotu is not necessary.

6. None has appeared to represent the case of the respondents.

7. In the above circumstances, it is necessary to see whether scrapping the report filed by the Advocate Commissioner suomotu is

correct or not?

8. Upon considering the arguments advanced by the learned counsel appearing for the petitioner, in general, if the parties concerned are not having any satisfaction over the report filed by the Advocate Commissioner, they are entitled to file objection to the Commissioner's report, further they are entitled to call the Advocate Commissioner under Order 26 Rule 10(3) of C.P.C., as a witness to the proceedings.

9. In the affidavit filed by the petitioner in support of the application before the trial Court, he has not stated anything about the irregularity committed by the Advocate Commissioner. Only allegation is that the said Advocate Commissioner has not co-operated for ascertaining the value of the property. In the said circumstances, it is not necessary for the Court below to scrap the entire report filed by the earlier Advocate Commissioner. More than that, without issuing notice to the Advocate Commissioner, for the reasons best known to the Presiding Officer, she exceeded her limits and scrapped the Advocate Commissioner's report suomotu. Hence, I am of the opinion that the impugned order is having material irregularity and necessarily to be set aside.

10. In the light of the above discussion, this Civil Revision Petition is allowed and the impugned order dated 30.04.2014 made in M.P.No.2956 of 2012 in M.P.No.645 of 1991 in Ejt. Suit No.26 of 1991 on the file of the III Court of Small Causes, Chennai, is hereby set aside and consequently, the report dated 14.11.2000, filed by the Advocated Commissioner is restored. Consequently, connected miscellaneous petition is closed. No cost.

21.11.2019

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

rts

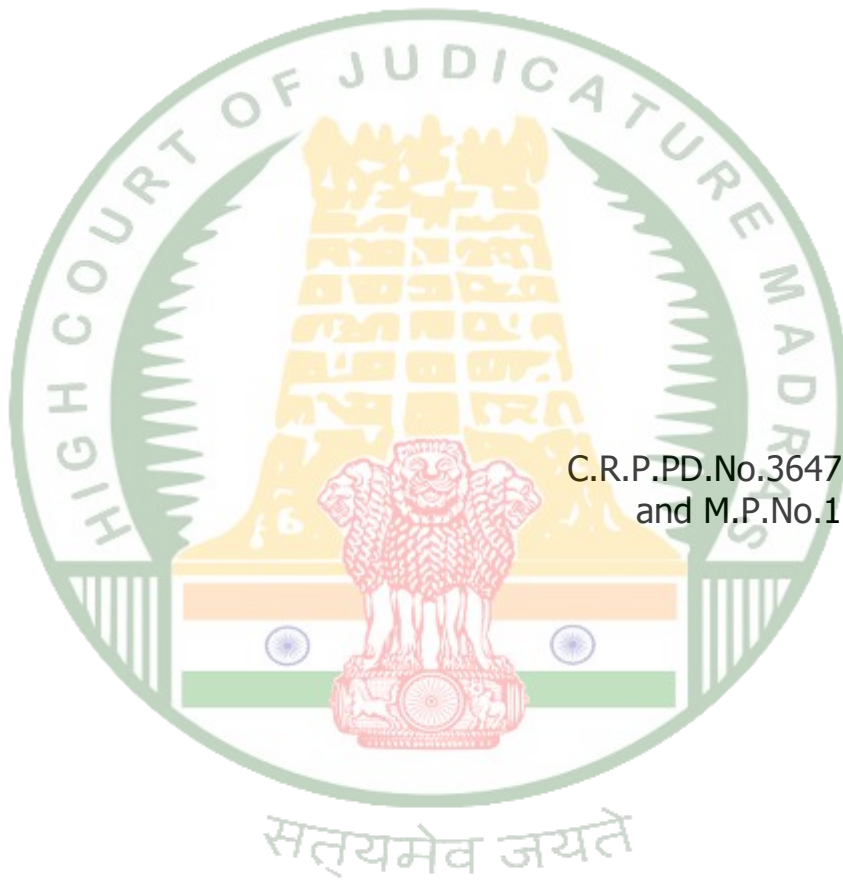
To

The III Court of Small Causes,
Chennai.

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R.PONGIAPPAN, J

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Order in
C.R.P.PD.No.3647 of 2014
and M.P.No.1 of 2014

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