

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD) No.4418 of 2014

&

M.P.No.1 of 2014

Parimalam

... Petitioner

Vs

1.B.G.S.Soundararajan

2.N.Dhanapal

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair order and decretal order in I.A.No.8 of 2014 in I.A.No.118 of 2012 in A.S.No.134 of 2012 dated 28.02.2014 on the file of the Principal Subordinate Judge, Salem.

For Petitioner : Mr.S.Velmurugan
for Mr.R.Srinivas

For Respondents : Mr.P.Jagadeesan

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ORDER

The instant Civil Revision Petition has been filed challenging the order dated 28.02.2014 passed by the learned Principal Subordinate

Judge, Salem in I.A.No.8 of 2014 in I.A.No.118 of 2012 in A.S.No.134 of 2012.

Brief facts leading to the filing of the instant revision:

2. The petitioner is the Appellant in A.S.No.134 of 2012 pending on the file of the learned Principal Subordinate Judge, Salem. The petitioner who was the plaintiff in the suit O.S.No.268 of 2011 filed a suit for permanent injunction restraining the respondents from interfering with her peaceful possession and enjoyment of the suit schedule property. The said suit came to be dismissed by the Trial Court on 03.09.2012. Aggrieved by the dismissal of the suit, the petitioner preferred an Appeal A.S.No.134 of 2012 before the learned Principal Subordinate Judge, Salem. During pendency of the appeal, the petitioner filed I.A.No.118 of 2012 seeking for appointment of an Advocate Commissioner to measure the suit schedule property.

3. The learned Principal Subordinate Judge, Salem allowed I.A.No.118 of 2012 by its order dated 05.03.2010 and an Advocate Commissioner was also appointed to measure the suit schedule property

as prayed for by the petitioner in I.A.No.118 of 2012 in A.S.No.134 of 2012. Thereafter, since the Advocate Commissioner appointed by the Court did not file his report, despite several opportunities granted to him, I.A.No.118 of 2012 filed by the petitioner/Appellant was ordered to be closed by the learned Principal Subordinate Judge, Salem on 04.10.2012.

4. The petitioner filed I.A.No.8 of 2014 in I.A.No.118 of 2012 in A.S.No.134 of 2012 under Section 151 of CPC to reopen I.A.No.118 of 2012 which was closed by the order of the learned Principal Subordinate Judge, Salem on 04.10.2013. By order dated 28.02.2014, the learned Principal Subordinate Judge, Salem dismissed I.A.No.8 of 2014 in I.A.No.118 of 2012 in A.S.No.134 of 2012. Aggrieved by the dismissal of I.A.No.8 of 2014 in I.A.No.118 of 2012 in A.S.No.134 of 2012, the instant civil revision petition has been filed under Article 227 of the Constitution of India.

5. Heard Mr.S.Velmurugan, learned counsel for the petitioner and Mr.P.Jagadeesan, learned counsel for the respondents.

Discussion:

6. It is not in dispute that an Advocate Commissioner was appointed as prayed for by the learned Principal Subordinate Judge, Salem in I.A.No.118 of 2012, but the said application was closed solely on the ground that the Advocate Commissioner did not execute the warrant, despite several opportunities granted to him. Thereafter, the petitioner filed an application viz., I.A.No.8 of 2014 in I.A.No.118 of 2012 in A.S.No.134 of 2012 under Section 151 of CPC to reopen and recall the order passed by the learned Principal Subordinate Judge, Salem, appointing the Advocate Commissioner in I.A.No.118 of 2012. However, without any basis, the learned Principal Subordinate Judge, Salem by impugned order has dismissed the application for appointment of Advocate Commissioner. The petitioner, at whose instance, the Advocate Commissioner was appointed by the Court cannot be held responsible for the fault of the Advocate Commissioner.

7. Further, as against the order of appointment of Advocate Commissioner, admittedly no appeal has been filed by the respondents. Therefore, the said order has attained finality. In the considered view of

this Court, no prejudice will also be caused to the respondents, in view of the aforesaid fact, if a new Advocate Commissioner is appointed to execute the warrant as prayed for in I.A.No.118 of 2012 by the petitioner in A.S.No.134 of 2012. Without considering these aspects solely on the ground that the Advocate Commissioner did not take steps to execute the warrant, despite several opportunities granted to him, the impugned order has been passed, dismissing the application filed by the petitioner/Appellant, which in the considered view of this Court is an erroneous order and passed by non-application of mind.

Conclusion:

8. For the foregoing reasons, the impugned order dated 28.02.2014 passed in I.A.No.8 of 2014 in I.A.No.118 of 2012 in A.S.No.134 of 2012 is hereby set aside and I.A.No.118 of 2012 in A.S.No.134 of 2012 pending on the file of the learned Principal Subordinate Judge, Salem is reopened and the learned Principal Subordinate Judge, Salem is directed to appoint a new Advocate Commissioner within a period of four weeks from the date on which the learned counsel for the petitioner files a memo along with the order of this Court and the said Advocate

Commissioner appointed by the Court shall inspect the suit schedule property and submit his report as prayed for in I.A.No.118 of 2012 in A.S.No.134 of 2012 within a period of four weeks from the date of his appointment.

9. In the result, the civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

27.06.2019

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



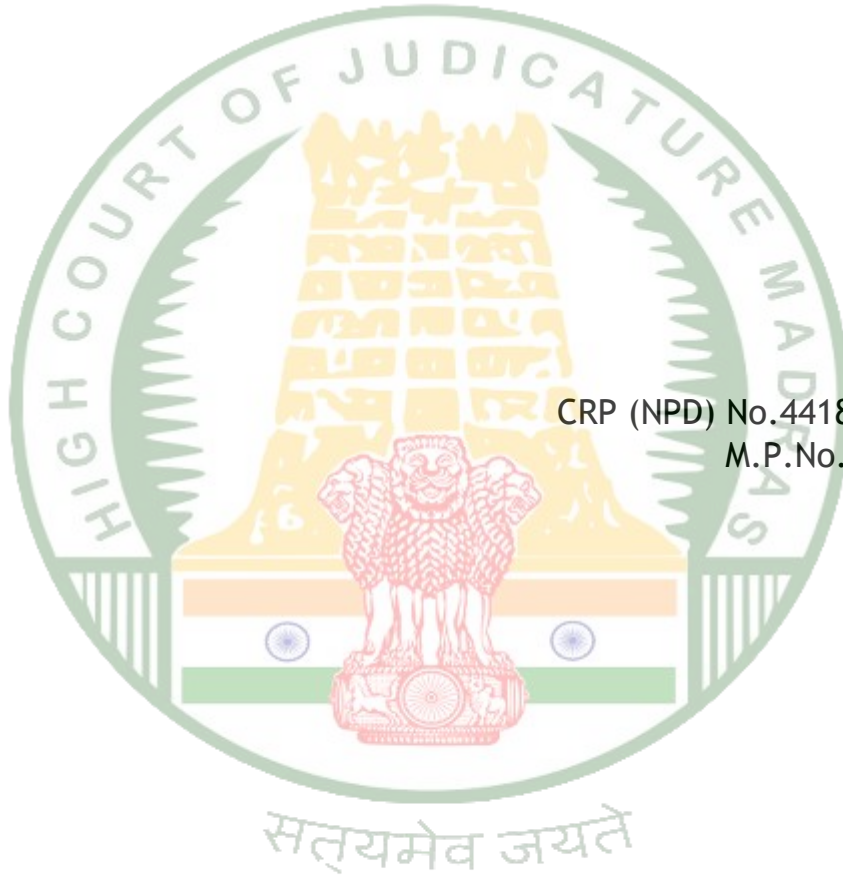
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The Principal Subordinate Judge, Salem.

ABDUL QUDDHOSE, J.

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