

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(PD).No.4807 of 2014

and

M.P.No.1 of 2014

J.K.Rajendiran

.. Petitioner

Vs.

1.C.Yasodha

2.N.Sasikala

3.R.Anbu

.. Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 12.11.2014 made in I.A.No.526 of 2014 in I.A.No.295 of 2012 in O.S.No.131 of 2012 on the file of the District Munsif court, Gudiyattam, Vellore.

For Petitioner

: Mr.T.Dhanyakumar

For Respondents

: Mr.V.M.G.Ramakannan

ORDER

The present Civil Revision Petition has been filed against the fair and decretal order dated 12.11.2014 in I.A.No.526 of 2014 in I.A.No.295 of 2012 in O.S.No.131 of 2012.

2.The petitioner was the first defendant in O.S.No.131 of 2012 filed by the Respondents 1 and 2 herein. The respondents 1 and 2 had filed I.A.No.295 of 2012 to appoint an Advocate Commissioner to inspect the suit schedule property. The said application was allowed. The Advocate Commissioner has also given his report. Both the petitioners and respondent have filed their objections to the report.

3.Meanwhile, the petitioner/first defendant filed I.A.No.573 of 2012 to reject the plaint and the same was dismissed. Aggrieved by the same, the petitioner/first defendant filed C.R.P.(PD).No.2261 of 2013 before this Court. It was also dismissed on 08.08.2014 and the Court below was directed to dispose the suit within six months from the date of receipt of a copy of the order.

4. Thereafter, the petitioner/first defendant filed in I.A.No.526 of 2014 in I.A.No.295 of 2012 to set aside the Advocate Commissioner's Report on record and to appoint another Advocate Commissioner to inspect the suit schedule property for the second time. The lower Court has dismissed the application vide the impugned order.

5. Aggrieved by the same, the petitioner/first defendant has filed the present Civil Revision Petition.

6.It is case of the petitioner that though the Advocate Commissioner appointed at behest of the respondent had filed a report, there are contradiction and both parties have filed their objection and therefore, no prejudice will be cause if another Advocate Commissioner is appointed to ascertain the facts.

7.The petitioner submitted that there were discrepancies in the report and the report was prepared without measuring the properties. It was submitted that the enquiry in the Interlocutory Application was delayed because of pendency of C.R.P.(PD).No. 2261 of 2013.

8.Per contra, the learned counsel for the respondents submits that the petitioner cannot maintain, the present Civil Revision Petition. It was to divert the attention of the respondents/plaintiffs and the Court. He further submitted that the prayer of the petitioner cannot be entertained as this will only further delay the proceeding which has been kept pending due to pendency of the present Civil Revision Petition and earlier Civil Revision Petition.

9.I have considered the rival submissions of both the parties and the impugned order passed by the Court dismissing the application for appointment of Advocate Commissioner for the second time.

10.The Court below has dismissed the application primarily on the ground that the petitioner had not taken steps to expunge report of the Advocate Commissioner's given an earlier occasion and that the petitioner appears to have been filed I.A.No.526 of 2014 with a view to delay the proceedings and in any event it was bound to complete the trial and pass judgment and decree in within six months in terms of Order dated 08.08.2014 in C.R.P.(PD).No.2261 of 2013.

11.The respondent/plaintiff has to succeed based on the averments in the plaint and evidence. Therefore, the petitioner cannot have an Advocate commissioner appointed or to disprove the case of the respondent/plaintiff to preempt the case of the respondent/plaintiff.

12.The object of local investigation is not to collect evidence which can be taken in the Court but to to obtain information from the spot and to give report on the physical feature of the property. Such report is meant to assist the Court to assess the evidence on record and to clarify any point which may be required in its quest to find out the truth for passing final judgment and decree in the suit.

13.The Court can also suo motu appoint an Advocate Commissioner at any stage of the case, if the report of the Advocate Commissioner already on record does not help it to arrive at a fair

conclusion on the facts of the case. I am therefore not inclined to allow the present Civil Revision Petition.

14. Therefore, the present civil revision Petition is dismissed while leaving the discretion to the court to suo-motu take a decision as to whether to appoint an Advocate Commissioner to arrive at an appropriate conclusion on the facts before passing judgment and decree.

15. The Civil Revision Petition stands dismissed with the above observations. Consequently, connected Miscellaneous Petition is closed. No costs.

20.03.2019

Index : Yes/No

Internet : Yes/No
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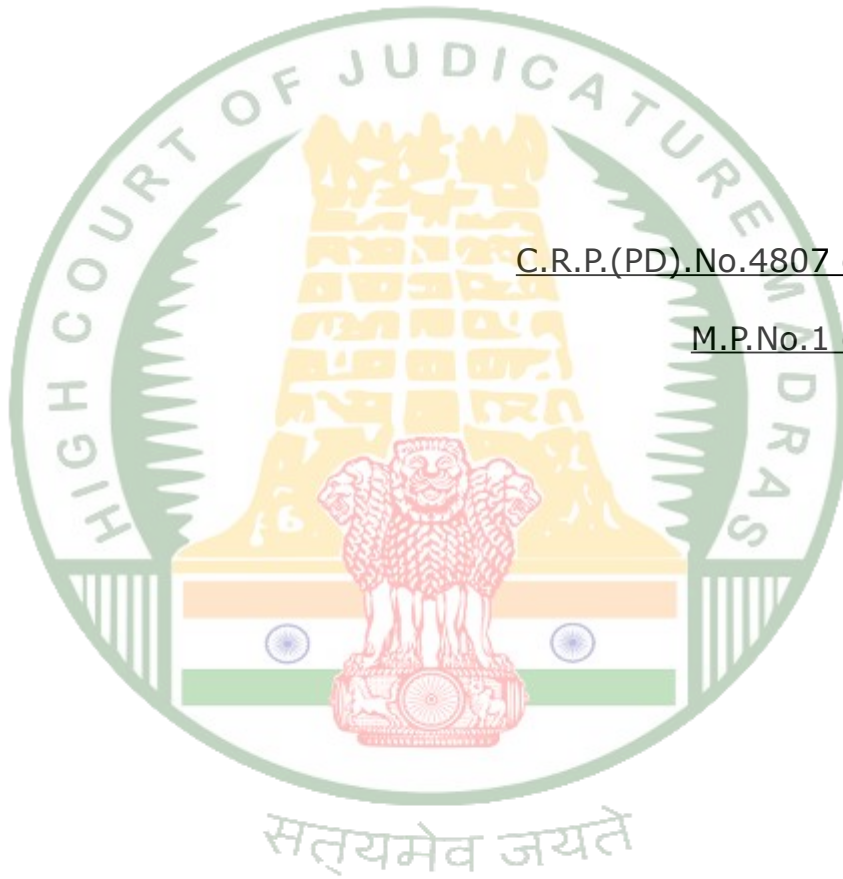
To

1. The District Munsif court,
Gudiyattam, Vellore.

2. The Section Officer,
V.R. Section, High Court, Madras.

C.SARAVANAN,J.

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