

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **28.08.2019**

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD) No.2855 of 2019
and
C.M.P.No.18662 of 2019

R.Raman (died)

1.S.Kaveri

2.Saroja

3.Kannan

4.Parvathi

Kamalammal (died)

[cause - title accepted vide Court order dated 20.08.2019,
made in C.M.P.No.17781 of 2019 in C.R.P.SR.No.102623 of 2019]

: Petitioners

1.Elumalai

2.A.Jayaraja

: Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order dated 15.04.2019, in I.A.No.401 of 2019 in O.S.No.210 of 2005 on the file of the learned Additional District Munsif, Alandur and consequently, allow the I.A.No.401 of 2019.

For Petitioners : Mr.M.Thangadurai

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ORDER

This Civil Revision Petition is directed against the order dismissing the application filed for appointment of an Advocate Commissioner.

2. The petitioners filed a suit for permanent injunction. From the records, it is seen that the suit was instituted in the year 2005 and it was dismissed for default in the year 2012. Thereafter, on the intervention of this Court in C.R.P.No.690 of 2013, the suit was restored by condoning the delay and a specific direction was issued to dispose of the suit, on or before 31.01.2016. The trial commenced in the suit and the suit is at part-heard stage for about two years. The plaintiffs' witnesses were all examined and at that stage, the above application for appointment of Advocate Commissioner came to be filed on 12.02.2019. The Trial Court, considering the nature of the suit and also pendency of the same, has dismissed the application. Apart from that, the direction issued by this Court was also taken note of by the Trial Court.

3. The learned counsel appearing for the petitioners would seriously contend that there is no bar for filing application for appointment of Advocate Commissioner at any stage and unless the disputed boundary in Paragraph No.7 of the written statement is elicited through inspection by the Advocate Commissioner, this dispute cannot be resolved properly. Therefore, in order to avoid confusion with reference to different boundary cited by both parties, the Commissioner should be appointed.

4. But, in a suit for permanent injunction, the issue of title is sought to be agitated by the plaintiffs after examination of witnesses on their side. The appointment of Advocate Commissioner at the stage of trial after a period of fourteen years after instituting the suit is nothing but an attempt to collect evidence and drag on the proceedings. This Court, in C.R.P.No.690 of 2013, fixed the time limit to dispose of the suit on or before 31.01.2016. The petitioners have filed the above application beyond the period of three years of the deadline fixed by this Court. The stage in which the petitioners are attempting to file this application in a suit for injunction appears to be for the purpose of protracting the proceedings. The possession of the petitioners can be very well proved by the revenue records as well as the title documents available with them. Therefore, the plaintiffs are bound to prove their oral and documentary evidence and the appointment of Advocate Commissioner at this stage is unnecessary and it amounts to collection of evidence. The Trial Court has rightly dismissed the application and the order passed in I.A.No.401 of 2019 does not suffer from any infirmity. Therefore, the Civil Revision Petition merits no consideration and accordingly, the same stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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28.08.2019

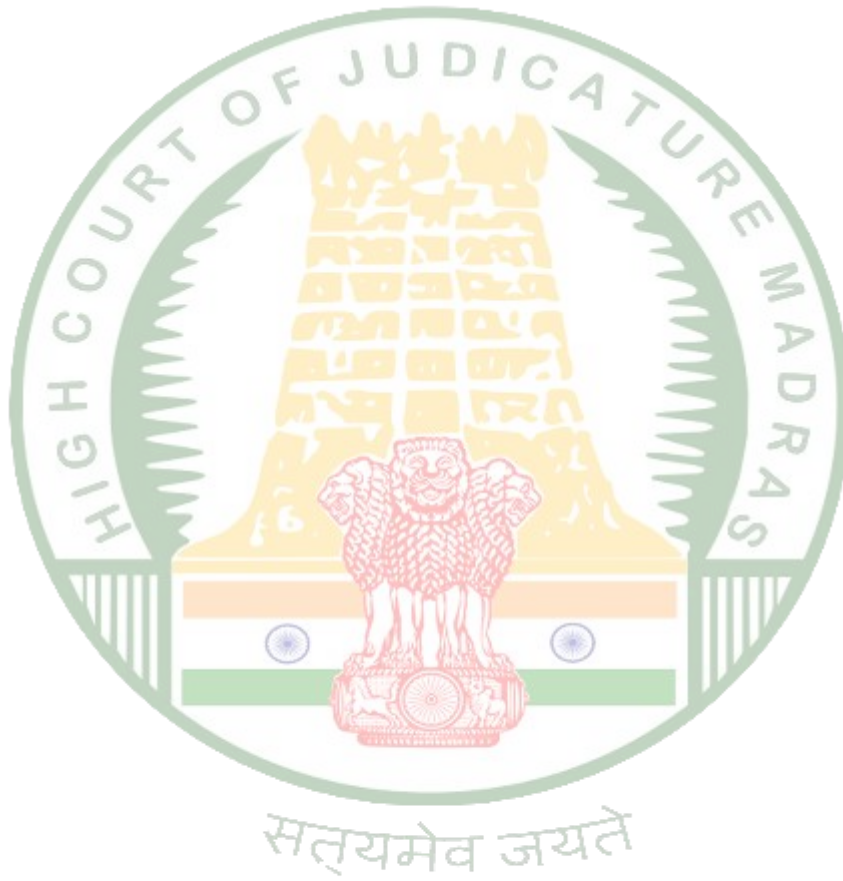
Index:Yes/No

Internet: Yes/No

SML/TK

To

The Additional District Munsif Court,
Alandur.

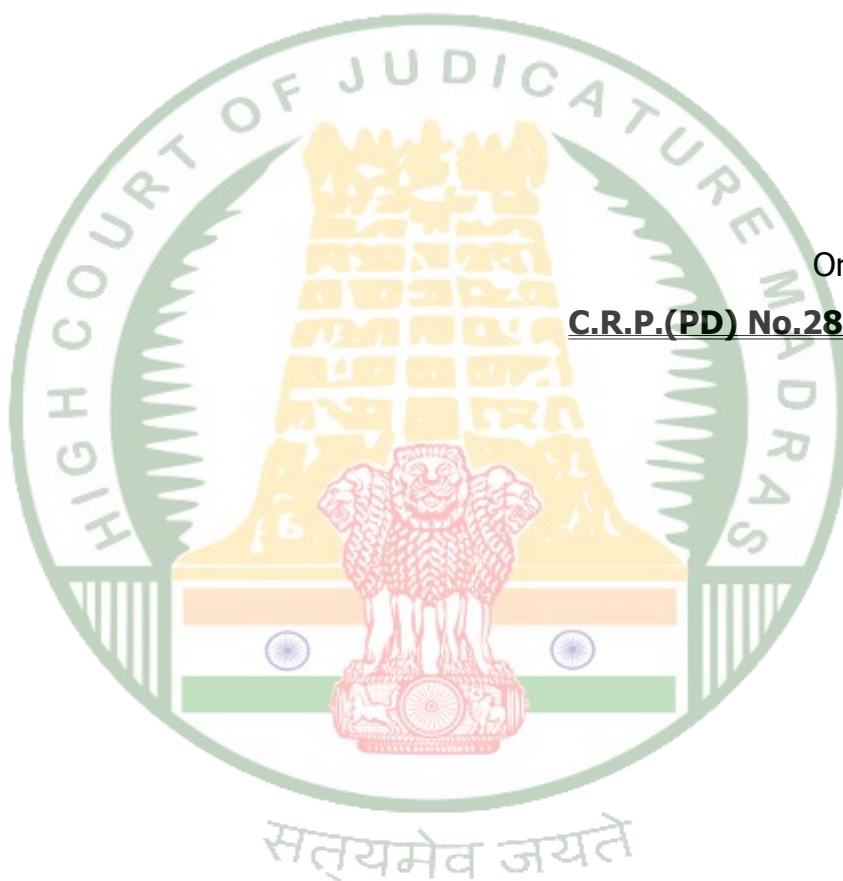


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CRP (PD) No.2855 of 2019

M.GOVINDARAJ, J.

SML/TK



Order made in
C.R.P.(PD) No.2855 of 2019

Dated: 28.08.2019

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