

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08. 2019

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CRP (NPD) NOS.2750, 2751 AND 2753 OF 2019

AND

CMP NOS.18090 AND 18098 OF 2019

CRP (NPD) NO.2750 OF 2019

K.Ganesan (Died)

1.K.Swamiappan

2.K.Subramanian

3.Mahalakshmi

4.Minor Rasathi Guardian / Mother Mahalakshmi

5.Minor Mithuna

Guardian / Mother Mahalakshmi

...

Petitioners

VS.

Thillainayagam (died)

1.Shanmugavadivu

Manickammal (died)

2.The Tahsildar

Taluk Office

Avinashi.

3.Subbulakshmi

4.Sivakumar

5.Balakrishnan

6.P.Subramaniam

7.G.Selvaraj

...

Respondents

PRAYER: Civil Revision Petition filed under Article 115 of the Civil Procedure Code against the fair and final order passed in I.A.No.11 of 2019 in A.S.No.23 of 2017 dated 19.07.2019 on the file of Sub Court at Avinashi.

For Petitioners : Mr.Ma.Pa.Thangavel

CRP (NPD) NO.2751 OF 2019

K.Ganesan (Died)
1.L.Swamiappan
2.K.Subramanian
3.Mahalakshmi
4.Minor Rasathi Guardian / Mother Mahalakshmi
5.Minor Mithuna
Guardian / Mother Mahalakshmi ... Petitioners

VS.

Thillainayagam (died)
1.Shanmugavadivu
2.Sivasakthi ... Respondents

PRAYER: Civil Revision Petition filed under Article 115 of the Civil Procedure Code against the fair and final order passed in I.A.No.28 of 2019 in A.S.No.22 of 2017 dated 19.07.2019 on the file of Sub Court at Avinashi.

For Petitioners : Mr.Ma.Pa.Thangavel

CRP (NPD) NO.2753 OF 2019

K.Ganesan (Died)

1.K.Swamiappan

2.K.Subramanian

3.Mahalakshmi

4.Minor Rasathi Guardian / Mother Mahalakshmi

5.Minor Mithuna

Guardian / Mother Mahalakshmi

...

Petitioners

VS.

Thillainayagam (died)

1.Shanmugavadivu

Manickammal (died)

2.The Tahsildar

Taluk Office

Avinashi.

3.Subbulakshmi

4.Sivakumar

5.Balakrishnan

6.P.Subramaniam

7.G.Selvaraj

8.Karuppasamy

9.Arjunan

10.Janaki

11.Poongodhai

12.Ganesan

13.Deepa

14.Rupa

15.Pavithra

16.Lakshma Abinaya

17.Gokulpriya

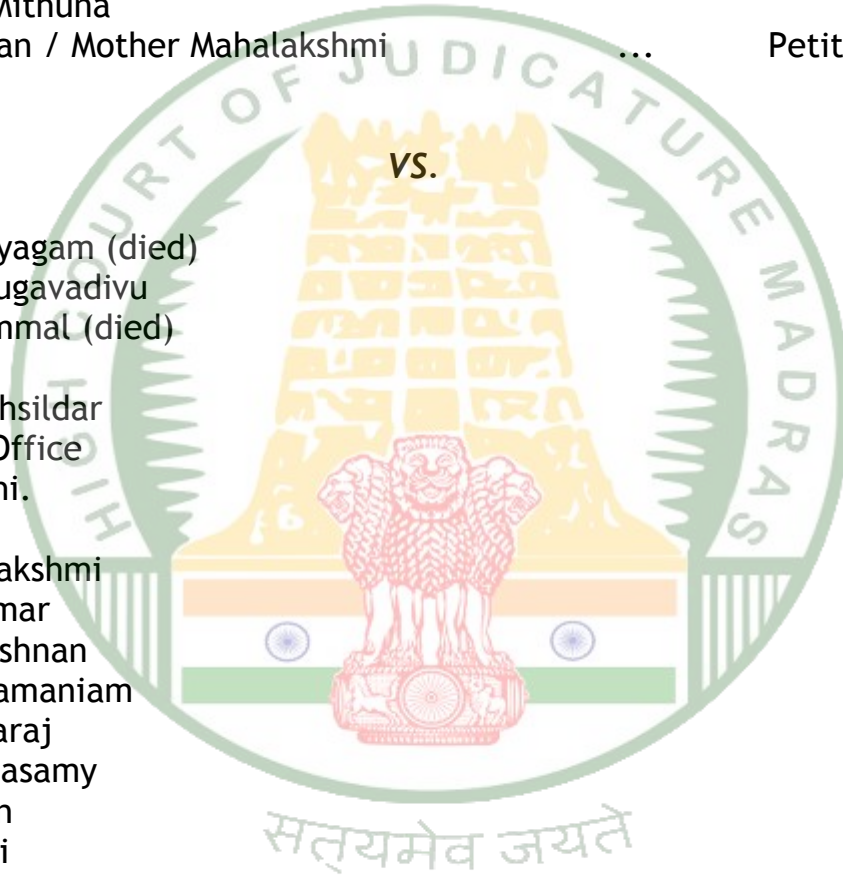
18.Thiruganavel

19.Ponnusamy

20.Selvam

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Respondents



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PRAYER: Civil Revision Petition filed under Article 115 of the Civil Procedure Code against the fair and final order passed in I.A.No.12 of 2019 in A.S.No.23 of 2017 dated 19.07.2019 on the file of Sub Court at Avinashi.

For Petitioners : Mr.Ma.Pa.Thangavel

COMMON ORDER

These Civil Revision Petitions are preferred against the order rejecting the applications filed for appointment of Advocate Commissioner; rejecting the application filed for impleading the third respondent viz., Sivasakthi and rejecting the application filed for impleading the proposed parties as defendants 10 to 22 in the suit.

2. The petitioners filed a suit for declaration of title, injunction and for recovery of possession. During the pendency of the suit, an Advocate Commissioner was appointed and he has also filed a report after conducting inspection on the suit property. After trial, the suit was dismissed. Against which, the petitioners have preferred an appeal and the same is pending. During pendency of the appeal, the petitioners have filed three three applications one for appointment of Advocate Commissioner and others for impleading the

parties. The application for appointment of Advocate Commissioner is to find out the further construction made by the subsequent purchasers. However all the interlocutory applications were dismissed.

3. The learned counsel for the petitioners would contend that unless an Advocate Commissioner is appointed, they may not be in a position to show that irreparable damage is caused to them and that the violations made by the opposite party would not come to light.

4. The Trial Court dismissed all the interlocutory applications including the application filed for appointment of Advocate Commissioner as it is not necessary to appoint an Advocate Commissioner during the pendency of the appeal.

5. I have heard the submissions made by the learned counsel appearing for the petitioners.

6. It is an admitted case of the petitioners that the possession is with the respondents and that they are putting up

further constructions. It is also an admitted case that in the suit for declaration of title, injunction application was dismissed. During the pendency of the suit, he did not have the benefit of interim injunction. Apart from this, an Advocate Commissioner was appointed during trial and he has also filed a report. During the subsistence of the Advocate Commissioner's report and title claimed by the petitioners is negatived, it is not necessary to appoint another Advocate Commissioner to find out further developments made in the suit property. It is incumbent on the part of the petitioners to establish their title first and thereafter, they can seek further relief and until and otherwise title is declared and injunction is granted, it is not open to the petitioners, more particularly, during the pendency of the appeal, seeking for appointment of Advocate Commissioner. Further, from the report of the Advocate Commissioner, it is seen that the subsequent purchasers have already put up construction and it is the admitted case of the petitioners themselves that the subsequent purchasers are putting up further construction and several properties have already been alienated. Therefore, at this stage, the injunction application, need not be entertained.

7. In view of the finding that the title of the petitioners is yet to be declared and that the petitioners have failed to prove the *prima facie* case, balance of convenience and irreparable injury, further, when the question of title is pending, the subsequent purchasers cannot acquire a better title than their vendors. If the sale made by the defendants is subject to *lis pendens*, in the event of success, the petitioners are entitled to recovery of possession, as prayed for by them in the suit. The Trial Court has rightly considered all these aspects and dismissed all the interlocutory applications and hence, the Civil Revision Petitions does not deserve to be admitted.

8. In fine, the Civil Revision Petitions are dismissed. No costs. Consequently, connected civil miscellaneous petitions are closed.

30.08.2019

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
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CRP (NPD) NOS.2750, 2751 & 2753 OF 2019

M.GOVINDARAJ, J.

TK

To

The Sub Judge
Sub Court
Avinashi.



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