

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 3308 of 2019
and
C.M.P. No. 21461 of 2019

1. S. Saroja

2. A. Mathew

... Petitioners

-Vs-

1. T. Ponnambalam

2. Mrs. Suryakala

3. The Sub Registrar
Sub Registrar Office,
Tambaram East,
Chennai - 600 059.

... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India against the fair and decretal order passed in I.A. No. 879 of 2018 in O.S. No. 380 of 2009 dated 21.06.2019 on the file of District Munsif Court, Chengalpattu.

For Petitioners

: Mr. V. Bhiman
for Anita Priscilla Jason

ORDER

This Civil Revision Petition has been filed against the fair and decretal order passed in I.A. No. 879 of 2018 in O.S. No. 380 of 2009, by the District Munsif Court, Chengalpattu, by order dated 21.06.2019.

2. Before the trial Court, the plaintiffs laid a suit for the prayer for declaration, declaring the Power of Attorney dated 06.10.2006 executed by the first defendant is null and void and also for declaration to declare the sale deed dated 09.10.2006 vide Document No. 9038 of 2006, at Sub Registrar Office, Tambaram is null and void and also for consequential relief.

3. In the suit, which is in the trial stage, where, the witness has been examined, at this juncture, the plaintiffs seem to have filed an application in I.A. No. 879 of 2018, with the prayer to appoint an advocate commissioner to measure the property and to identify the exact location of the property with boundaries as in the FMB sketch with the help of Taluk Surveyor.

4. The said application having been considered by the trial Court was dismissed through the impugned order dated 21.06.2019, as against which, the present revision petition has been filed.

5. Mr. V. Bhiman, learned counsel appearing for the revision petitioners / plaintiffs would submit that, at the time of trial, one of the witness who is an interlocutor, according to him, who has not been ranked in the suit, stated so many things and by virtue of that, it will create unnecessary wrangling in the issue raised in the suit.

6. The area is occupied especially by the plaintiffs therefore, in order to control the multiplicity of proceedings, it has become necessity to appoint an advocate commissioner to measure the property and file a report.

7. The learned counsel appearing for the petitioners would also submit that, the reason stated by the learned Judge in the impugned order for rejecting the said application is also unsustainable and therefore, for all these reasons, the impugned order is liable to be interfered with.

8. I have considered the said submissions made by the learned counsel appearing for the petitioners and have gone through the materials placed before this Court.

9. Assuming that the reasons cited in the order which is impugned herein, may not be justified for rejecting the application, apart from these reasons given by the learned judge in the impugned order, this Court feels that the said application to seek appointment of advocate commissioner to measure the property is unwarranted.

10. The reason being, in the suit, the relief as has been stated above, sought for is declarative relief against the documents such as Power of Attorney, sale deed etc., and in order to resolve the same, the triable issue is not lying on any identification of the property with boundaries with the help of FMB sketch and for the said purpose the advocate commissioner need not be appointed.

11. Against the documents, the physical feature of the property would no way help the Court to arrive at the conclusion, therefore it is

nothing but an attempt on the part of the revision petitioners / plaintiffs to delay the proceedings, therefore this Court feels that, the order passed by the trial Court rejecting the said application is fully justified and hence, it does not require any interference from this Court.

12. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also closed. No costs.

04.10.2019

Index : Yes / No

Speaking order / Non speaking order

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To

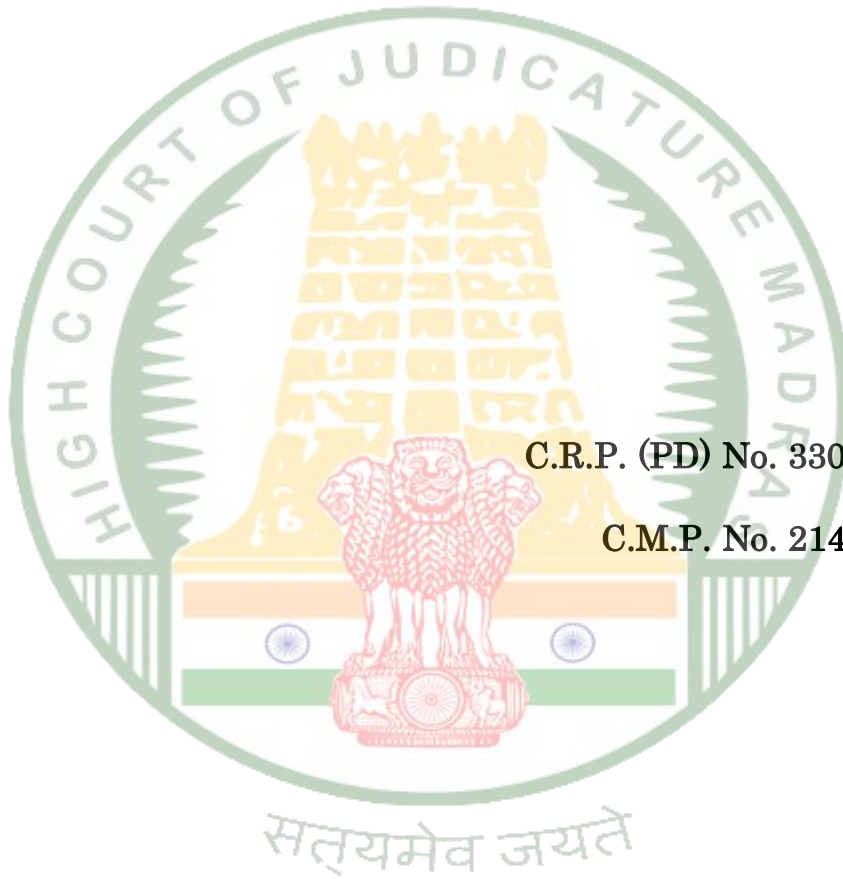
1. The District Munsif Court,
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R. SURESH KUMAR, J.

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