

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Civil Revision Petition (PD) No.3231 of 2019
and C.M.P.No.21048 of 2019

1.Amala
2.Janet

... Petitioners

-Vs-

1.S.Meena
2.S.Selvaraj
3.S.Senthilkumar

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 02.08.2019 passed in I.A.No.3983 of 2016 in O.S.No.4290 of 2015 on the file of the 1st Additional City Civil Court, Chennai.

For Petitioners : Mr.S.Udhaya Kumar

ORDER

This revision petition has been filed against the fair and decreetal order dated 02.08.2019 passed in I.A.No.3983 of 2016 in O.S.No.4290 of 2015 on the file of the 1st Additional City Civil Court, Chennai.

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2. Before the trial Court, the respondents / plaintiffs filed the suit in O.S.No.4290 of 2015 for mandatory injunction and other reliefs and in the said suit, the plaintiffs filed the present application for appointment of Advocate Commissioner to verify the physical features of 'A' and 'B' schedule properties along

with photographs and the said application has been allowed by the trial Court in the impugned order, as against which the present revision has been filed.

3. Heard Mr.S.Udhayakumar, learned counsel appearing for the petitioners, who would submit that, the suit was laid along with an application to seek injunction by the respondents / plaintiffs, where an ex parte injunction was granted, and using the said injunction order obtained after filing the suit, the respondents / plaintiffs have put up a gate in the suit schedule property, as if that the gate has already been put up prior to the filing of the suit, in order to create an evidence to state that they are having possession of the portion of the property by virtue of the gate, and therefore, if the Advocate Commissioner visits the property and note down the said aspect, that will unnecessarily create an evidence, which is not actually available at the time of filing of the suit. Hence, the learned counsel for the petitioner contended that if the Advocate Commissioner's report is filed to that effect, it would prejudice the interest of the revision petitioners / defendants and therefore, opposing the same, the present revision has been filed.

4. Heard the submissions made by the learned counsel for the petitioners and perused the materials placed before this Court.

5. In view of the nature of the prayer sought for in the suit, as so many mandatory injunctions have been sought for in respect of the portion of the

property, this Court feels that, it becomes essential that the Advocate Commissioner is appointed to verify the physical features of the property and therefore, we cannot find fault with the order passed by the trial Court in allowing the application filed for appointment of the Advocate Commissioner.

6. However, as it is the specific case of the defendants that whether the gate, which was allegedly put up by the respondents / plaintiffs in 'B' Schedule property is of the recent origin or already has been put up, it can also be verified by the Advocate Commissioner and in this regard, whatever objections to be raised by the revision petitioners / defendants herein, can be raised at the time of visit of the Advocate Commissioner and such objections can be taken note of by the Advocate Commissioner and accordingly a comprehensive report can be filed by the Advocate Commissioner.

7. With the above observations, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

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Internet : yes
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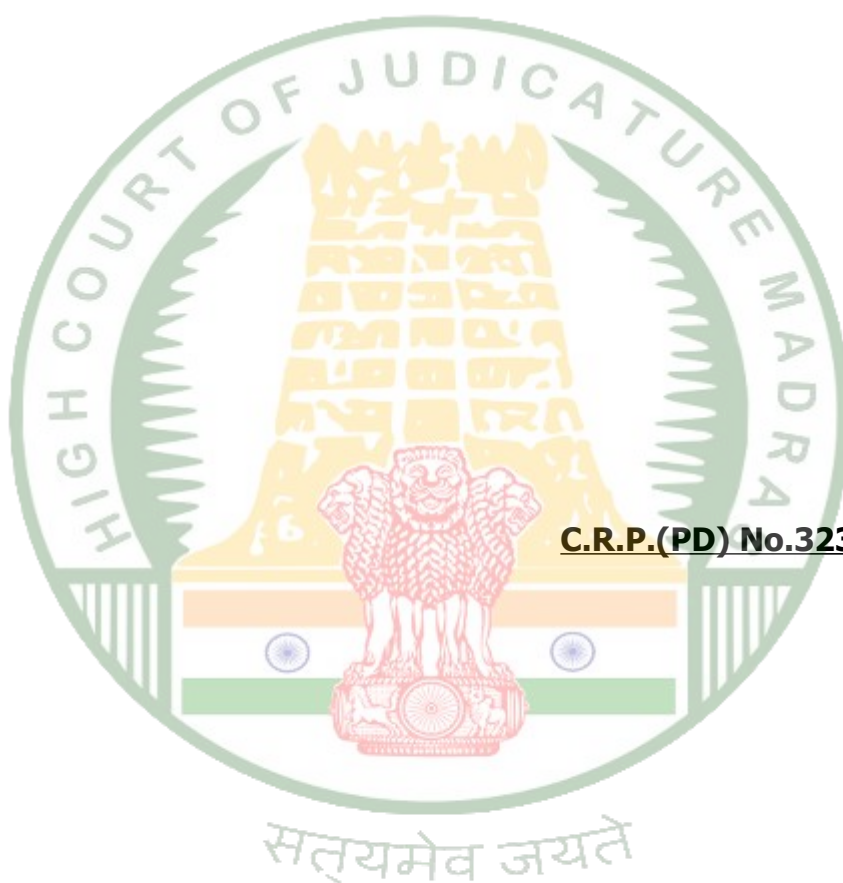
To

1. 1st Additional Judge, City Civil Court, Chennai

C.R.P.(PD) No.3231 of 2019

R. SURESH KUMAR, J.

KST



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