

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

CRP.(PD)No. 2572 of 2017

and

C.M.P.No.12281 of 2017

1. E. Lakshmanan

2. A. Karthick

...Petitioners

Versus

N. Kanniappan

...Respondent

Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order and decretal order dated 24.03.2017 in I.A.No.185 of 2015 in O.S.No.68 of 2015 on the file of the learned Subordinate Judge, Thiruvallur.

For Petitioner : Mr.R. Vijayaraghaven

For Respondents : Mr.A. Palaniappan

ORDER

The sum and substance of the reasoning given in the petitioners' application seeking for appointment of an Advocate Commissioner is that they are in absolute possession and enjoyment of the suit property and that the respondent is claiming the land purchased by them overlaps with their lands and is thereby attempting to interfere

with the peaceful possession and enjoyment of the property.

2. The suit has been filed to declare that the second plaintiff is the absolute owner of the suit property. This Court, in various decisions, has held that in respect of a relief sought in this nature, the plaintiffs are required to prove their case on the oral and documentary evidence alone and that the Advocate Commissioner cannot be appointed for the purpose of collecting evidences through the Court. The trial Court has also relied upon some of these decisions of this Court reported in **2014 (2) CTC 68 (Thangaraj versus Pappathi) and 2012 (6) CTC 502 (Sandia Satheesh versus H.. Walter and 13 others)**, etc.,

3. It is seen that by appointing an Advocate Commissioner, these petitioners intend to establish that the property of the respondent herein overlaps with that of the petitioners' property, which can only be termed as collection of evidence through the report of the learned Advocate Commissioner. As such, the Court below was justified in rejecting the same.

4. The learned counsel for the petitioner, by relying upon the decision of this Court reported in **2005 (3) MLJ 525(Sivagurunathan versus Ramalingam and others) and 2010 (4) Andhra LD 198 (Varala Ramachandra Reddy versus Mekala**

Yadi Reddy) submitted that when the location of the property and the extent are denied, the Commissioner is required to be appointed for effective adjudication of the dispute. In both these decisions, the suit was one for permanent injunction, where the issue of possession would be vital and when the location of the extent of the property is denied therein, it would be justifiable to have an Advocate Commissioner appointed. Whereas, when the issue for declaration of title is involved, the parties are required to prove their title based on the oral and documentary evidence alone and the Advocate Commissioner's report cannot be used for the purpose of establishing the title.

5. As such, I do not find any infirmity in the order passed in I.A. No.185 of 2015 in O.S. No.68 of 2015, by the learned Subordinate Judge, Tiruvallur.

6. In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

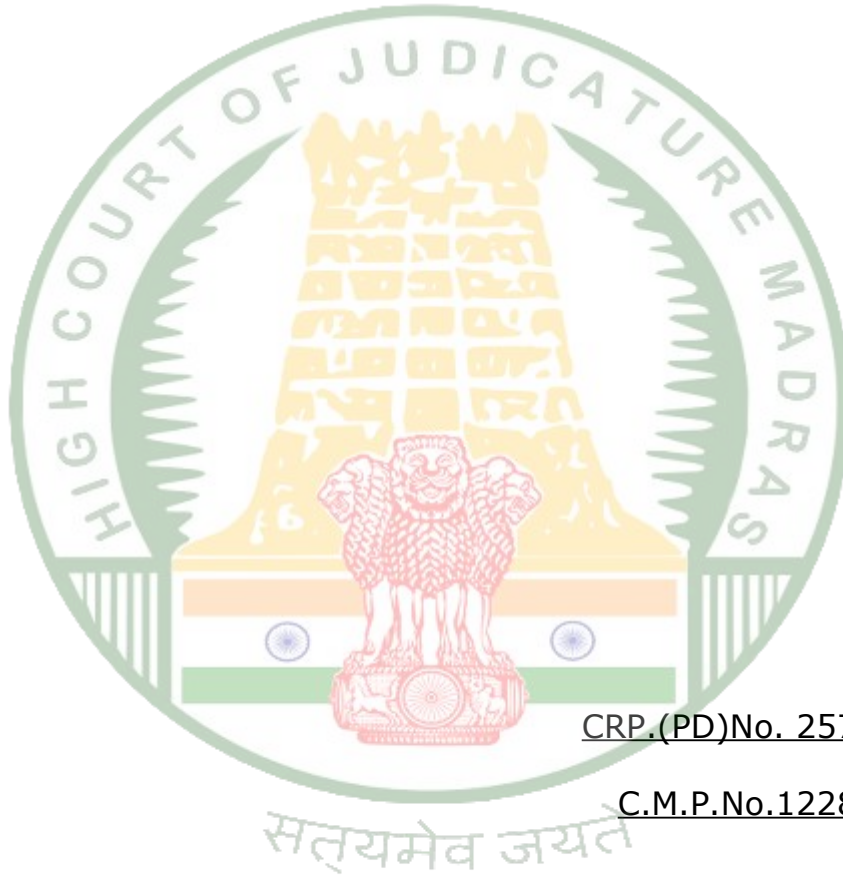
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24.01.2019

Index: Yes/No
Internet: Yes/No

To
The Subordinate Judge, Thiruvallur

M.S.RAMESH, J.
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