

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

C.R.P.(PD)No.3522 of 2018

and

C.M.P.No.19721 of 2018

E.S.Selambanan Petitioner

Vs.

1.A.Sennimalai Gounder

2.E.S.Appuswamy

3.Muthayammal

4.K.Sellammal

5.Kuppayammal

... Respondents

PRAYER: Petition filed under Article 227 of the Constitution of India against the order and decree dated 17.04.2018 passed in I.A.No.166/2018 in I.A.No.167/2018 in O.S.No.210/2011 on the file of I Additional District Judge, Erode.

For Petitioner : Mr.R.Raja Rajan

For Respondent : Mr.D.Selvaraju (for R1)
Mr.M.Sriram (for R2 to R5)

ORDER

The order under challenge in the present revision is rejection of the application filed under Order 26 Rule 13 and 14 r/w Rule 9 of CPC, seeking for appointment of Advocate Commissioner to divide the suit properties by metes and bounds.

2. Though the petitioner has raised several grounds challenging the dismissal order, the learned counsel for the petitioner would submit that he is not aggrieved with the appointment of Advocate Commissioner, but he is aggrieved only because of Mr.P.Manickam, Advocate, being appointed as an Advocate Commissioner on the ground that the learned Advocate Commissioner is a Junior of the plaintiff's counsel and relative of the second defendant's wife.

3. The learned counsel appearing for the respondents on the other hand, vehemently opposed such a statement. In the counter filed by the respondents 2 to 5, it has been categorically denied that the said Advocate Commissioner was a Junior of the plaintiff's counsel. The relationship of the Advocate Commissioner with the second defendant's wife is also denied. There is no proof produced by the petitioner herein that the said Advocate

Commissioner is either Junior or plaintiff's counsel or relative of the second defendant's wife. As such, the allegations made by the learned Advocate Commissioner cannot be given much credence, particularly, in view of such denial by the respondents before this Court.

4. Nevertheless, when a doubt is raised about the suitability of the Advocate Commissioner, it would not be appropriate to direct the same Advocate Commissioner to execute the warrant. However, it is made clear that this Court has not questioned the earlier Advocate Commissioner's integrity.

5. In the light of the above observations, the order dated 17.04.2018 passed in I.A.No.166 of 2018 in O.S.No.210 of 2011 on the file of the I Additional District Judge, Erode is set aside, in so far as it relates to appointment of Mr.P.Manickam as Advocate Commissioner alone and for this limited purpose, the application is remanded back to the learned I Additional District Judge, Erode, for appointing any other suitable Advocate Commissioner on such terms and conditions, as the learned Judge may feel deems fit and proper.

5. Since it is represented that the Advocate Commissioner's fee was earlier paid by the plaintiff and the second defendant before the trial court and since the present Advocate commissioner is being appointed at the instance of the petitioner/first defendant, the fresh Advocate Commissioner's remuneration shall be directed to be paid by the petitioner/first defendant. The exercise of executing the warrant and concluding the proceedings in I.A.No.166 of 2018 in O.S.No.210 of 2011 shall be completed as expeditiously as possible, in any event, within a period of 90 days from the date of receipt of a copy of this order.

7. This Civil Revision Petition stands disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is also closed.

10.01.2019

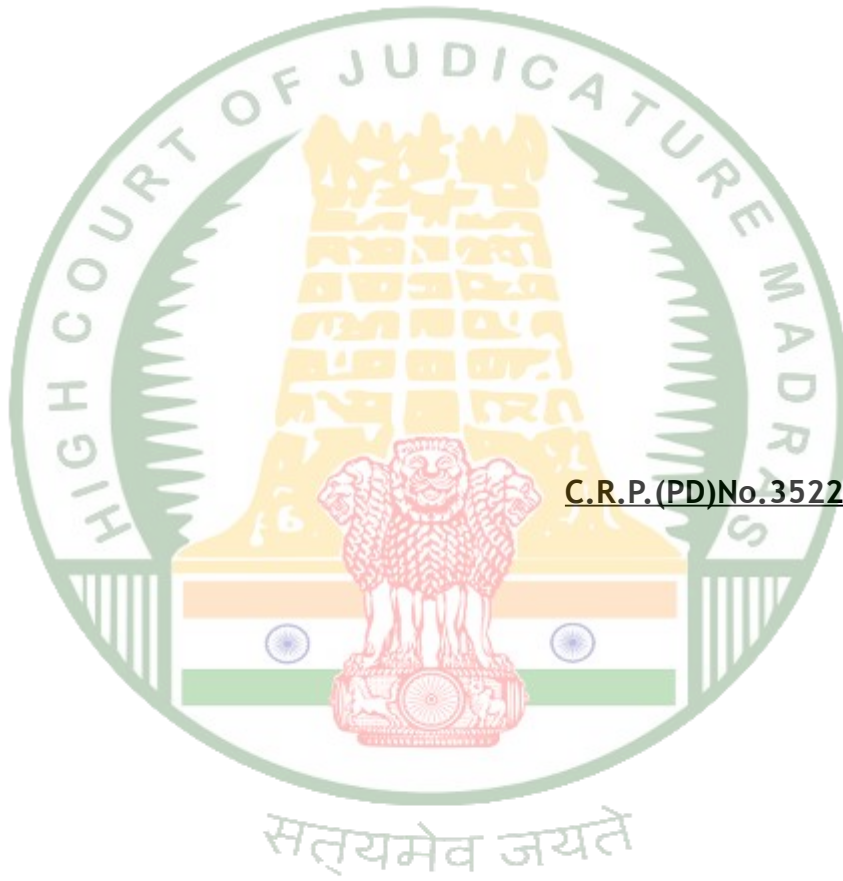
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To
The I Additional District Judge,
Erode.

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M.S.RAMESH.J.,

mbi/sai



C.R.P.(PD)No.3522 of 2018

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