

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

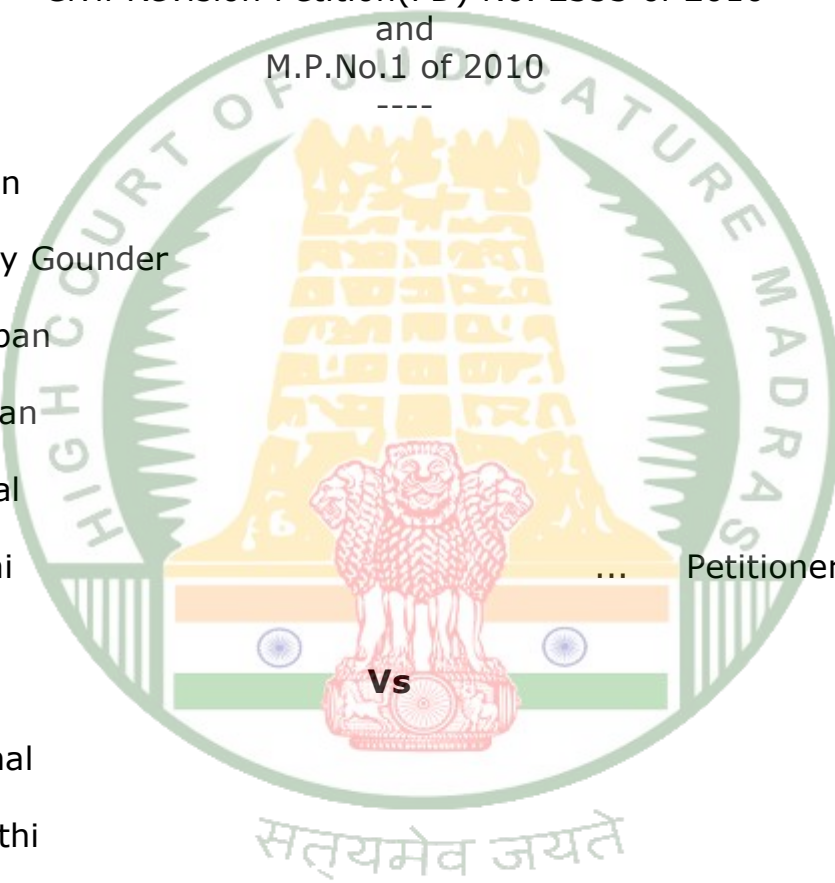
Civil Revision Petition(PD) No. 2353 of 2010

and
M.P.No.1 of 2010

1. Rayappan
2. Velusamy Gounder
3. Senniappan
4. Murugesan
5. Rajagopal
6. Rajamani

... Petitioners

1. Angammal
2. Saraswathi
3. Lakshmanan
4. Ramasamy
5. Poovathi
6. Poomathal
7. Viswanathan
8. Sivamani



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9. Shanthamani

10. Nachammal

11. Krishna Gounder

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 05.02.2010 made in I.A.No.1630 of 2009 in O.S.No.874 of 2007 on the file of the I Additional District Court, Coimbatore.

For Petitioners : Mr. S. Mukunth,
for M/s. Sarvabhauman Associates

For Respondents : Mr. Jayan ,
for Mr. D.Ravichander,
R1 to R9 & R11

ORDER

The respondents herein had filed a suit for partition in O.S.No.874 of 2007 on the file of the I Additional District Court, Coimbatore, against the petitioners herein, in the year 2007. When it was posted for trial, the petitioners/defendants had filed an Interlocutory Application in I.A.No.1630/2009 for appointment of Commissioner to note down the physical features and demarcating the boundaries of the properties and the same was dismissed on 05.02.2010. Challenging the said order, the petitioners are before this Court with this revision.

2. The learned counsel for the petitioners would submit that the suit properties were divided in the year 1966 by way of arrangement/partition and they are in possession of their respective shares, and they have improved their respective properties by putting up constructions, borewells and other improvements and they are in separate possession and enjoyment of the properties and there is a demarcating boundaries between the properties of the petitioners and the respondents. In order to prove the same, an Advocate Commissioner has to be appointed to note down the physical features of the property. If the physical feature is note down and the extent of the possession of the property is come into force, it will enable the Court to render justice. But, the trial Court failed to consider the fact and dismissed the same.

3. The learned counsel for the respondents vehemently objected that at the time of trial, the petitioners/defendants had filed applications and the trial Court rightly dismissed the said application. Even now the trial Court has not taken any steps to commence the trial. There is no perversity in the order passed by the trial Court and the same is liable to be dismissed.

4. Heard both sides. Perused the materials available on records carefully.

5. Admittedly, the respondents/plaintiffs had filed the suit in O.S.No.874 of 2007 on the file of the I Additional District Court, Coimbatore. During the pendency of the trial, the petitioners/defendants had filed the application in I.A.No.1630 of 2009 to note down the physical features of the suit properties and the said application was dismissed by the trial Court. Now, challenging the same, the present revision has been filed.

6. It is a settled preposition of law that a Commissioner cannot be appointed to collect the evidence or to establish the possession. Even though, the petitioners had filed an application to note down the physical features, in the suit for partition, after passing preliminary decree, their proportionate share will be allotted to the parties and the division and other things can be done only during the final decree application. Certainly, in the final decree application, the Court will appoint Advocate Commissioner. The Advocate Commissioner will do all these things in the final decree and the petitioners are at liberty to make their submissions in the final decree application. I find no perversity in the order passed by the trial Court. Hence, the Revision

is liable to be dismissed.

6. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. Since, the suit is pending from the year 2007, the trial Court is directed to dispose the suit in O.S.No.874 of 2007 within a period of 6 months from the date of this order.

01.09.2020

mrp

To

1. The I Additional District Court, Coimbatore.
2. The Section Officer, V.R. Section, High Court, Madras

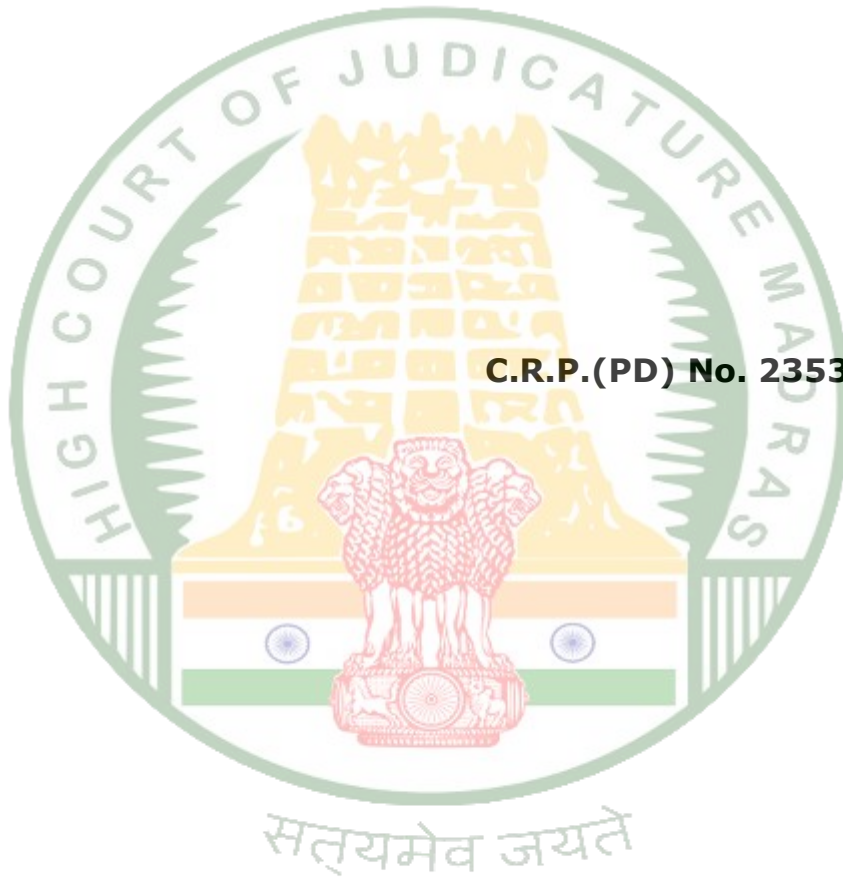


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P.VELMURUGAN,J.

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