

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2020

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(PD).No.609 of 2020
and
C.M.P.No.3189 of 2020

A.Revathy

... Petitioner

Vs.

1.G.Banumathy
2.G.Rosaiah
3.G.Saraswathy
4.S.Pushpa
5.B.Sumathi
6.G.Balaram

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the order dated 17.07.2019 passed in the memo in I.A.NO.116 of 2018 in O.S.No.3209 of 2016 on the file of the XVIII Additional City Civil Judge, Chennai by allowing this petition and to grant such relief and reliefs that this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.P.Raja

For Respondents : Mr.A.Ajay Khose [for RR1 & 2]
Mr.H.Srinivasan [for RR3 to 6]

ORDER

This revision petition is directed against the order passed by the Trial Court in accepting the Advocate Commissioner report without considering the memo of objections filed by the fourth defendant.

2. The suit is for partition and final decree proceedings are under process. Passing of final decree alone is stayed in an appeal preferred against preliminary decree. For dividing the properties by metes and bounds, the Trial Court appointed an Advocate Commissioner who had submitted his report along with photographs. Against the Advocate Commissioner's report both the plaintiff as well as the fourth defendant have filed their objections.

3. However, without considering the objections and without giving an opportunity to the parties to cross-examine the Advocate Commissioner, the trial Court simply accepted report and closed memo's filed by the parties without consideration. Aggrieved over the same, the fourth defendant / revision petitioner is before this Court.

4. Heard both sides and perused the record placed before this Court.

5. The memo of objections filed by the 4th defendant against the Advocate Commissioner's report dated 06.03.2019 reveals specific lapses found in the report and procedural discrepancies at the time of inspection and against the manner in which the Commissioner report was prepared. Despite the same, the trial Court has closed the memo, without giving any opportunity.

6. When specific objections are raised to the report of the Advocate Commissioner, an opportunity should be given to the parties to elicit the correct facts by examining the Advocate Commissioner. In the instant case, the Court has not followed the procedure, but simply accepted the report as it is supported by

photographs annexed to the report. The procedure adopted by the trial Court as such is not correct.

7. Therefore, the order of the trial Court dated 17.07.2019 on the memo filed by the fourth defendant is hereby set aside and the matter is remitted back to the Trial Court for providing opportunity to the fourth defendant to examine the Commissioner with respect to the objections raised by her. It is also urged that the revision petitioner / 4th defendant shall complete the examination of the Advocate Commissioner, with respect to the objection raised by her, in one or two hearings, without detriment to his professional commitments.

The Civil Revision Petition is ordered with the above observation. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

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To

The XVIII Additional City Civil Judge,
Chennai.

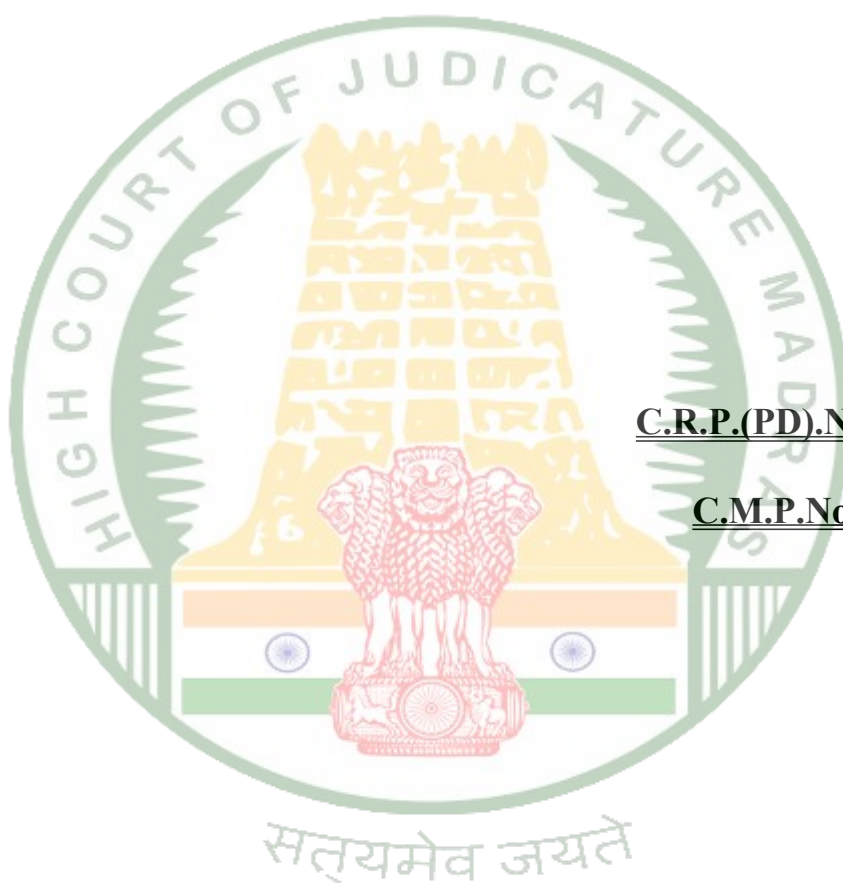


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M.GOVINDARAJ, J.

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