

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2020

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

CRP(PD).No. 1018 of 2020

1. Ammani
2. Sumitra

..Petitioner

Vs

1.S.Sathya Ananth
2.Rajendran
3.Thasildar
Office at Nehru Street,
Kaspa Tindivanam,
Tindivanam Taluk.

4.District Collector,
Tindivanam Taluk,
Villupuram District.

5. V.Ramamurthy

.. Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India against the Fair and Decreetal Order dated 08.01.2020 made in I.A. No. 523 of 2019 in O.S.No. 432 of 2008 on the file of the Additional

District Munsif, Tindivanam, dismissing the application filed by the petitioner herein to remit back the Advocate Commissioner for the purpose of revisit the suit schedule property to note down the left out details.

For Petitioner : Mr.M.Venkadeshn

For Respondent :

ORDER

The Civil Revision Petition is filed Fair and Decreetal Order dated 08.01.2020 made in I.A. No. 523 of 2019 in O.S.No. 432 of 2008 on the file of the Additional District Munsif, Tindivanam, dismissing the application filed by the petitioner herein to remit back the Advocate Commissioner for the purpose of revisit the suit schedule property to note down the left out details.

2. The revision petitioner herein has filed a suit in O.S. No. 432 of 2008 against the respondent herein before the Additional District Munsif, Tindivanam for permanent injunction, restraining the respondent to interfere with the schedule mentioned property. The respondents have filed their written statement in the aforesaid suit stating that the petitioners have

encroached upon the public pathway. The revision petitioners have filed an application in I.A. No. 523 of 2019 under Order 26 Rule 9 r/w Section 151 of CPC to remit back the Advocate Commissioner to revist the suit schedule property and note down the left out details. The Court below had dismissed the said application filed by the revision petitioners. Against which, the present Civil Revision Petition is filed.

3. Heard the learned counsel appearing for the petitioner and perused the documents available on record.

4. The learned counsel for the revision petitioners submitted that the Court below has erroneously dismissed the aforesaid application filed by the revision petitioners as not maintainable without considering the grounds raised by the petitioners that the said application was filed only to note down the additional details, which were left out in the earlier report submitted by the Advocate Commissioner. The learned counsel further submitted that the finding of the the Court below that the petitioners have to adduce evidence to prove existence of water tank is liable to be rejected

because such exercise by the petitioners would only waste of time. Instead the Advocate Commissioner who was earlier directed to note down the physical features could have very well note down the existence or non-existence of the water tank encroaching the pathway. Therefore, no prejudice would be caused to the respondent if the said application is directed to be allowed.

5. On a perusal of materials on records, it reveals that the petitioners herein have earlier filed an application in I.A.No. 1736 of 2009 to appoint the Advocate Commissioner and to note down the physical features of the suit schedule property. Accordingly, as directed, the Advocate Commissioner had note down the physical features of the suit scheduled property and filed a report dated 14.12.2009. Thereafter, the petitioners have filed the present I.A.No. 523 of 2019 seeking prayer to revisit of Advocate Commissioner and to note down the additional details of existing water tank in the encroaching pathway.

6. In view of the above, it is clear that original report of Advocate Commissioner was submitted in the year 2009. Being not satisfied with the aforesaid report, the petitioners have filed the present application seeking revisit of the Advocate Commissioner to the same property after inordinate delay of 10 years. The said prayer is maintainable only if the petitioners are able to prove the existence of the water tank by way of material evidence. Hence in the absence of the same, the Court below has rightly dismissed the application filed by the petitioners. This Court finds no reason to interfere with the order passed by the Court below.

7. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition if any, is closed.

10.03.2020

Index : Yes/No
Internet : yes
ak

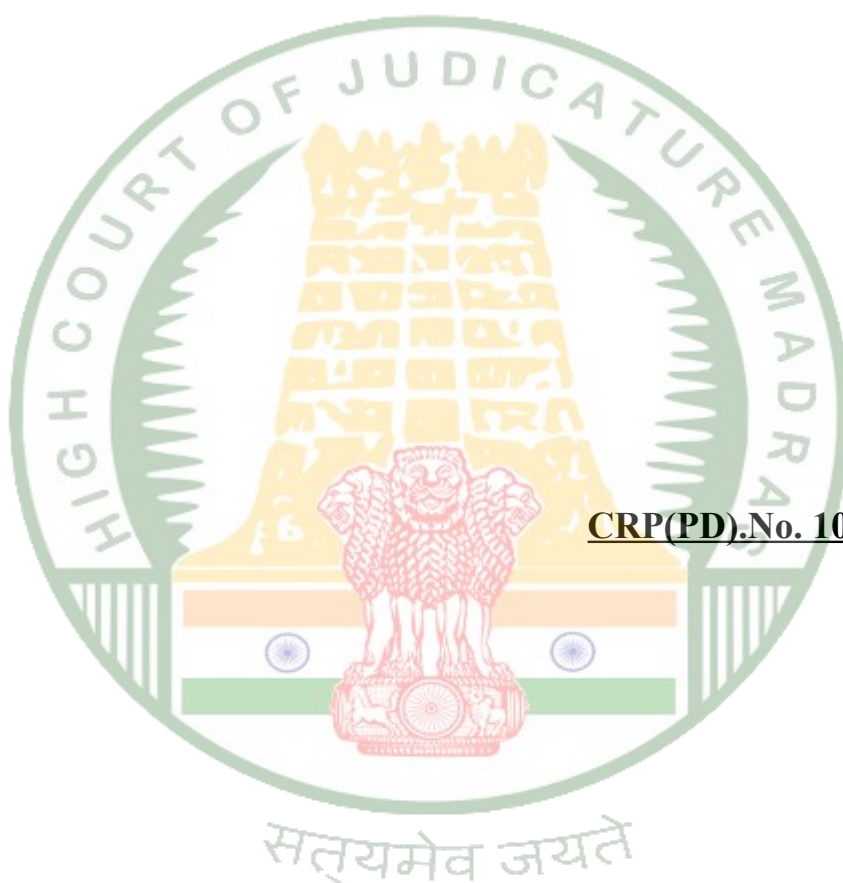
To
The Additional District Munsif,
Tindivanam,

5 / 6

CRP(PD).No. 1018 of 2020

D. KRISHNAKUMAR, J

ak



CRP(PD).No. 1018 of 2020

WEB COPY

10.03.2020