

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.12.2020

PRONOUNCED ON : 18.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(PD)No.2055 of 2016

(Through Video Conferencing)

Ismail Khan

Petitioner

Vs

1. Siva
2. Rani

Respondents

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, to set aside the fair and decreetal order dated 7.3.2016, made in IA.No.171 of 2015 in OS.No.128 of 2013, by the Subordinate Judge, Panruti.

For Petitioner : Mr.R.Gururaj

For Respondent : Mr.P.Kannan Kumar

ORDER

1. This Civil Revision Petition has been filed, to set aside the fair and decreetal order dated 7.3.2016, made in IA.No.171 of 2015 in OS.No.128 of 2013, by the Subordinate Judge, Panruti.
2. The facts of the case, in a nutshell, are that the Plaintiff is the Petitioner herein and the Defendants are the Respondents. The suit was filed for declaration of title, demolition and vacant possession and alternatively for

damages. In the suit, the Plaintiff has filed IA.No.171 of 2015, seeking appointment of Advocate Commissioner to inspect the A-Schedule property and to file a report and plan. Since the said IA was dismissed, this Civil Revision Petition has been filed.

3. This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.
4. The contention of the Petitioner is that in order to prove the encroachment and to bring out the truth, appointment of Advocate Commissioner is necessary to note down the physical features of the A-Schedule property. Reliance is placed on **1988 TNLJ 200 (Rajam Chettiar Vs. Mohanlan) by the Petitioner**.
5. Per contra, it is the stand of the Respondents that only in order to collect evidence in the form of report and plan, the Plaintiff has sought for appointment of Advocate Commissioner, which cannot be allowed. Reliance is placed on an unreported **judgement of this Court, dated 09.12.2011, made in CRP(MD)No.1500 of 2009.**
6. In a suit for declaration and recovery of possession, wherein it is alleged encroachment into the suit property of the Plaintiff, one of the methods to find out as to whether or not there is such an encroachment, the appointment of Advocate Commissioner is necessary and the same has to be done only after measuring both the properties in question.
7. In the interest of justice, it would be appropriate for the trial Court to appoint an Advocate Commissioner to find out whether the said property is

encroached upon by the defendants or not. In such view of the matter, this Court is of the view that the impugned order of the court below, dismissing the application for appointment of Advocate Commissioner is erroneous.

8. With the above directions, this Civil Revision Petition is allowed, setting aside the impugned order. The court below is directed to appoint an Advocate Commissioner to inspect the suit property with reference to the title deeds of both the parties, if necessary with the help of a Surveyor. The above exercise shall be completed within a period of two months from the date of receipt of a copy of this order. No costs.

18.12.2020

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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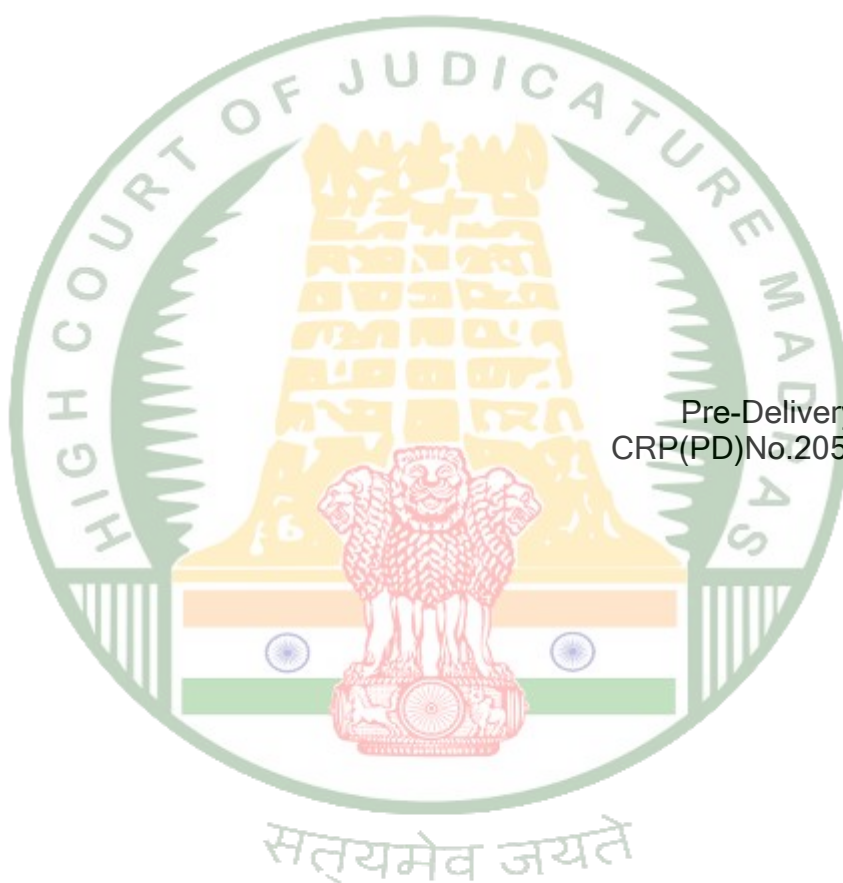
To
1. The Subordinate Judge, Panruti

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CRP(PD)No.2055 of 2016

A.A.NAKKIRAN, J.

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Pre-Delivery Order in
CRP(PD)No.2055 of 2016

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18.12.2020