

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.12.2020

PRONOUNCED ON : 23.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(NPD)No.2392 of 2016

CMP.No.12346 of 2016

(Through Video Conferencing)

1. Chittu alias Palaniappan
2. Iyathal
3. P.Bakkiam
4. Manikandan
5. Elumalai

Petitioners

Vs

1. Narayana Gounder
 2. Kuppusamy
- Respondents

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, to set aside the order, dated 17.06.2016, made in IA.No.26 of 2015 in AS.No.53 of 2015, by the Principal Subordinate Judge, Salem.

For Petitioner : Mr.J.Prithivi

For Respondent : Mr.Zeenath Begum-R1

ORDER

1. This Civil Revision Petition has been filed, to set aside the order, dated 17.06.2016, made in IA.No.26 of 2015 in AS.No.53 of 2015, by the Principal Subordinate Judge, Salem.

2. The facts of the case, in a nutshell, are that the Petitioners 1 and 2 are the

Defendants 2 and 3 in OS.No.911 of 2009 on the file of the District Munsif, Salem. Since the 1st Petitioner died, the Petitioners 3 to 5 were brought on record as the legal heirs of the deceased 1st Petitioner. The Plaintiff is the 1st Respondent and the 1st Defendant is the 2nd Respondent. The suit was filed for mandatory injunction and recovery of possession. The suit was dismissed, by the judgement and decree dated 28.01.2015, as against which, the Plaintiff has filed AS.No.53 of 2015, before the Principal Sub Court, Salem. In the appeal, the Plaintiff has filed the present application seeking appointment of an Advocate Commissioner to note down the physical features of the suit property and to file a report. In and by the impugned order, the application was allowed. Hence, 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. According to the Petitioners, without seeking appointment of an Advocate Commissioner in the suit, such a relief cannot be granted at the appellate stage and only in order to collect evidence in the form of report and plan, the appointment of Advocate Commissioner was sought for, which cannot be allowed.
5. It is the case of the Plaintiff/ Respondent that in order to prove the contention of the Plaintiff and to bring out the truth, appointment of Advocate Commissioner is necessary to note down the physical features of the suit property, which was rightly done by the lower appellate court.

6. In this case, the suit was filed for the relief of mandatory injunction for removal of the pipeline, allegedly put up by the Defendants into the property of the Plaintiff. To decide the issue as to whether pipeline was put up in the land of the Plaintiff or not, it is necessary to appoint an Advocate Commissioner.
7. The lower appellate court has rightly appointed an Advocate Commissioner to find out whether the pipeline is put up in the property of the plaintiff or not, by the impugned order. This Court is of the view that the impugned order of the court below, allowing the application for appointment of Advocate Commissioner is sustainable.
8. In fine, this Civil Revision Petition is dismissed. No costs. Consequently, the connected MP is closed.

23.12.2020

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To

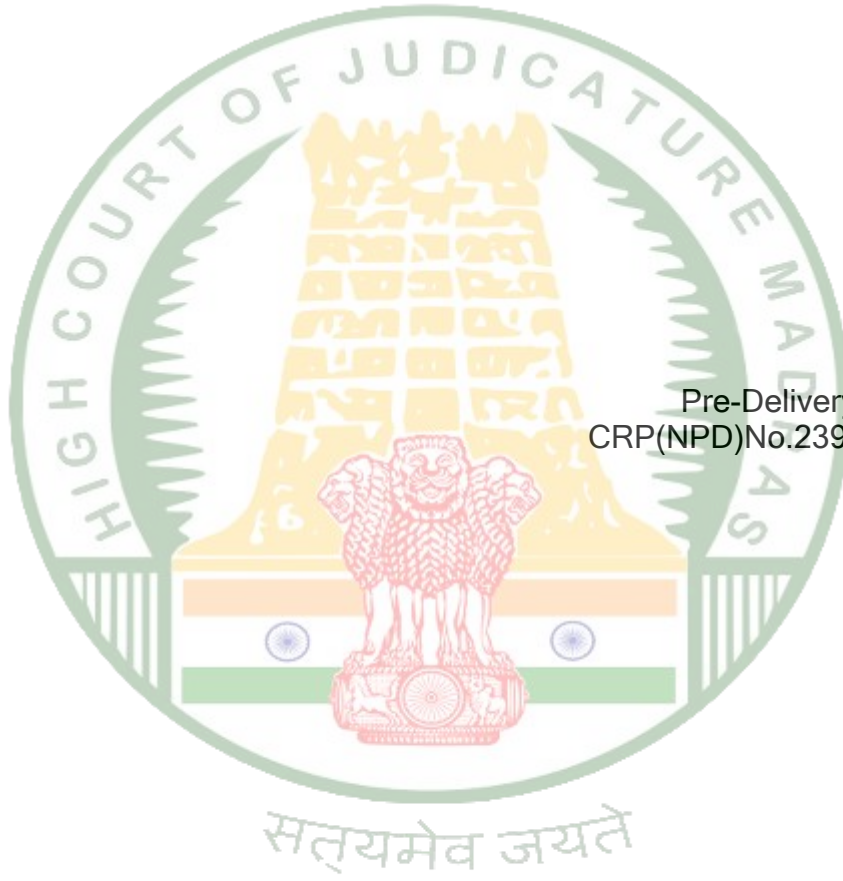
1. The Principal Subordinate Judge, Salem

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A.A.NAKKIRAN, J.

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Pre-Delivery Order in
CRP(NPD)No.2392 of 2016

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23.12.2020