

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).No.2461 of 2016

and

C.M.P.No.12805 of 2016

1.SubadraPalayam
2.Krishnapal
3.Kripal

... Petitioners

Vs.

1.Dr.K.Kapali
2.K.Sahadevan

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order of the learned XIV Assistant Judge, City Civil Court, Chennai, dated 10.12.2015 made in I.A.No.11053 of 2013 in O.S.No.9428 of 1981.

For Petitioners : Ms.G.Sumithra

For Respondents : Mr.S.A.Hafiz

ORDER

This Civil Revision Petition has been filed by petitioners/defendants 3, 5 and 6 against the order passed by the XIV Assistant Judge, City Civil Court, Chennai, in I.A.No.11053 of 2013 in O.S.No.9428 of 1981 dated 10.12.2015.

2. The petitioners herein had filed an application in I.A.No.11055 of 2012 to pass a final decree based on the preliminary decree passed in the suit. Subsequently, they filed another application in I.A.No.11053 of 2013 to appoint an Advocate Commissioner to divide the suit property as per the preliminary decree. In the said application, the trial Court appointed one advocate Mrs.Nirmala Murugan as Commissioner and the said Commissioner also inspected the suit property and filed her report on 30.10.2014 along with plans. Thereafter, both the parties have filed objections for the said Commissioner's report. The learned trial Court after considering the said objections passed an order as the Court decided to accept the suggestions given by the fifth respondent instead of the common passage as noted by the Surveyor in his sketch attached with the Commissioner's report and the sketch

attached with the objection filed by the fifth respondent should be taken for consideration for passing final decree. The petitioners feeling aggrieved with the aforesaid order, they have filed the present Civil Revision Petition.

3. Heard, Ms.G.Sumitra, the learned counsel for the petitioners and Mr.S.A.Hafiz, the learned counsel for the respondents.

4. The learned counsel for the petitioners has submitted that since already a final decree application is pending, the trial Court should have passed a final order in the said final decree application itself, and instead of that it has passed an order making observation with regard to which suggestion made by the parties has to be accepted. She further submitted that by making such observation, the Court has pre-determined the issues, which would affect the rights of the petitioners and therefore, she prayed to allow this Civil Revision Petition and set aside the aforesaid observation made by the trial Court and direct the trial Court to dispose of the final decree application itself in accordance with law.

5. Per contra, the learned counsel for the fifth respondent has submitted that since both the parties have filed objections to the Commissioner's report and plans, after considering the said objections, the trial Court has passed the said order and that would not affect the rights of the parties. Therefore, he prayed to dismiss this Civil Revision Petition.

6. A perusal of the typed set of papers filed by the petitioners would show that in the partition suit, a preliminary decree was passed and based on the said preliminary decree, the petitioners herein, who are being the defendants 3, 5 and 6 had filed an application in I.A.No.11055 of 2012 to pass a final decree in accordance with law and also filed an application in I.A.No.11053 of 2013 to appoint an Advocate Commissioner to divide the suit property in pursuance of the preliminary decree. The trial Court had appointed one advocate Mrs.Nirmala Murugan, and the said Commissioner also inspected the suit property and filed a report with plans and thereafter, both the parties had filed their objections to the said Commissioner's report.

7. As pointed out by the learned counsel for the petitioners, the trial Court should have passed a final order in the final decree application itself taking into consideration the Commissioner's report, plans and the objections filed by the parties and instead of that it the trial Court made any observation independently that may affect the interest of the parties. Therefore, this Court is of the view that the aforesaid observations have to be set aside.

8. In the result, this Civil Revision Petition is allowed. The order passed by the trial Court in the aforesaid application on 10.12.2015 is set aside. The trial Court is directed to dispose of the final decree application itself by taking into consideration the Commissioner's report and her plans and the objections filed by all the parties uninfluenced by the observation made by the trial Court by the order dated 10.12.2015 or order passed by this Court in this Civil Revision Petition. No costs. Consequently, connected Miscellaneous Petition is also closed.

23.11.2020

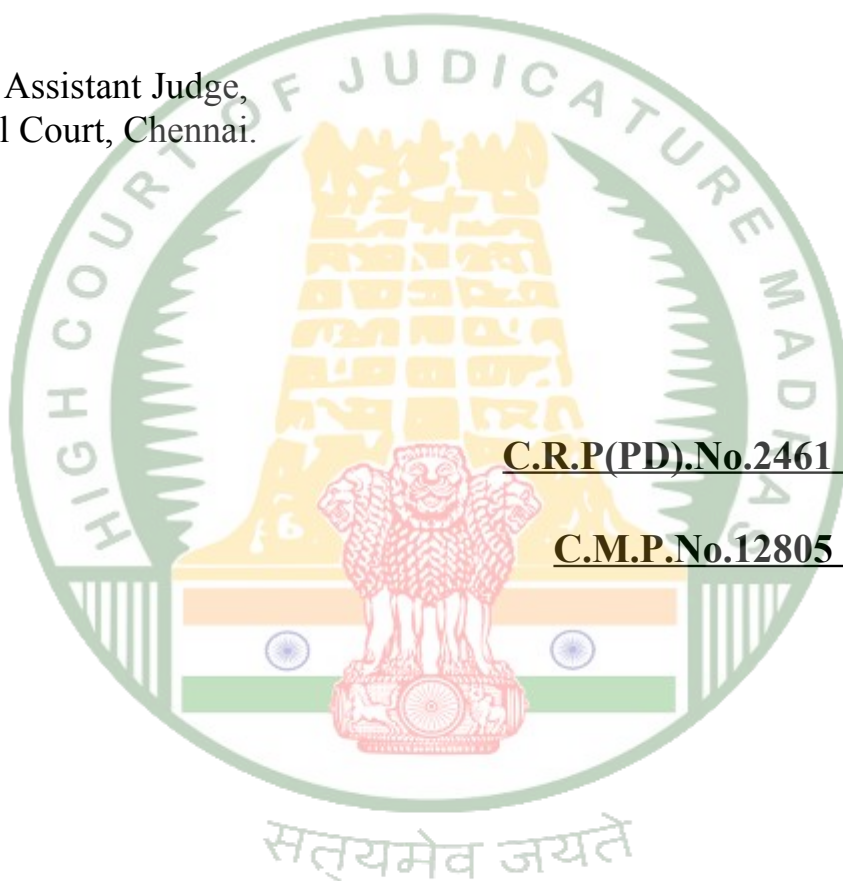
Internet : Yes/No
dna

CRP (PD).No.2461 of 2016

P.RAJAMANICKAM, J.
dna

To

The XIV Assistant Judge,
City Civil Court, Chennai.



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