

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(P.D).No.1406 of 2019
and C.M.P.No.9242 of 2019

Sellammal ...Petitioner

Vs

1.Selvaraj

2.Gunasekaran

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Indian Constitution of India to set aside the fair and decreetal order passed in I.A.No.285 of 2018 in O.S.No.32 of 2018 dated 20.02.2019 before the Hon'ble District Munsif Cum Judicial Magistrate, Valapadi.

For Petitioner : Mr.Udhayakumar for
M/s Karan and Uday

For Respondents : No appearance

ORDER

This Petition has been filed to set aside the fair and decreetal order passed in I.A.No.285 of 2018 in O.S.No.32 of 2018 dated 20.02.2019

before the Hon'ble District Munsif Cum Judicial Magistrate, Valapadi.

2.The revision petitioner is the plaintiff and she filed the suit in O.S.No.32 of 2018 before the District Munsif cum Judicial Magistrate, Valapadi.

3.The suit has been filed for permanent injunction. The respondents herein are disputing the title of the petitioner's vendor and her predecessor as well as the possession.

4.The I.A.No.285 of 2018 in O.S.No.32 of 2018 has been preferred by the petitioner herein for appointment of Advocate Commissioner to ascertain about the physical features of the suit property and to file final report. After considering the arguments advanced by either side counsel in length, the learned trial Judge has dismissed the I.A.No.285 of 2018 on 20.02.2019 on the ground that the possession has to be proved by letting legal evidence. To prove the possession an Advocate Commissioner cannot be appointed to collect evidences.

5.Against the order of the District Munsif cum Judicial Magistrate, Valapadi, made in I.A.No.285 of 2018 in O.S.No.32 of 2018 dated 20.02.2019, the petitioner is before this Court with this present Civil

Revision Petition.

6.The learned counsel for the revision petitioner submitted that the trial Court dismissed the petition for appointment of Advocate Commissioner is unjust and against the fact of the case. He would further submit that the factum of possession has be adjudicated after measuring the properties in question. Therefore, the petitioner filed the application to appoint Advocate Commissioner to measure the suit properties in question with an approved Surveyor. The learned trial Judge, without considering the requirement of Advocate Commissioner evidence, dismissed the petition. The learned counsel further reiterated other grounds raised in the revision petition.

7.I have considered the submission of the learned counsel for the petitioner and perused the materials on record.

8.Admittedly, the suit is filed by the revision petitioner/plaintiff-Sellammal, for the relief of bare injunction, with regard to the plaint schedule property. The respondent/defendant filed written statement and contended that a total extent of 70 cents of land in Survey No.58/14 is in their possession and enjoyment. In that property, the revision

petitioner/plaintiff has no right and he pleaded to dismiss the Civil Revision Petition.

9.Under these circumstances, the petitioner/plaintiff filed the petition for appointment of Advocate Commissioner to examine the suit mentioned property.

10.In a suit for permanent injunction, the petitioner/plaintiff has to prove his possession. He cannot use the Court as an instrument to collect evidence through Advocate Commissioner. The entire burden is on the petitioner to prove his possession by letting legal evidence. Appointment of Advocate Commissioner will not help to prove his possession. Therefore, the trial Court dismissed the petition. There is no error in the order of the trial Court made in I.A.No.285 of 2018 in O.S.No.32 of 2018 dated 20.02.2019. I find no merits in the Petition.

11.Hence, the Civil Revision Petition is dismissed. Consequently connected miscellaneous petition is closed. No costs.

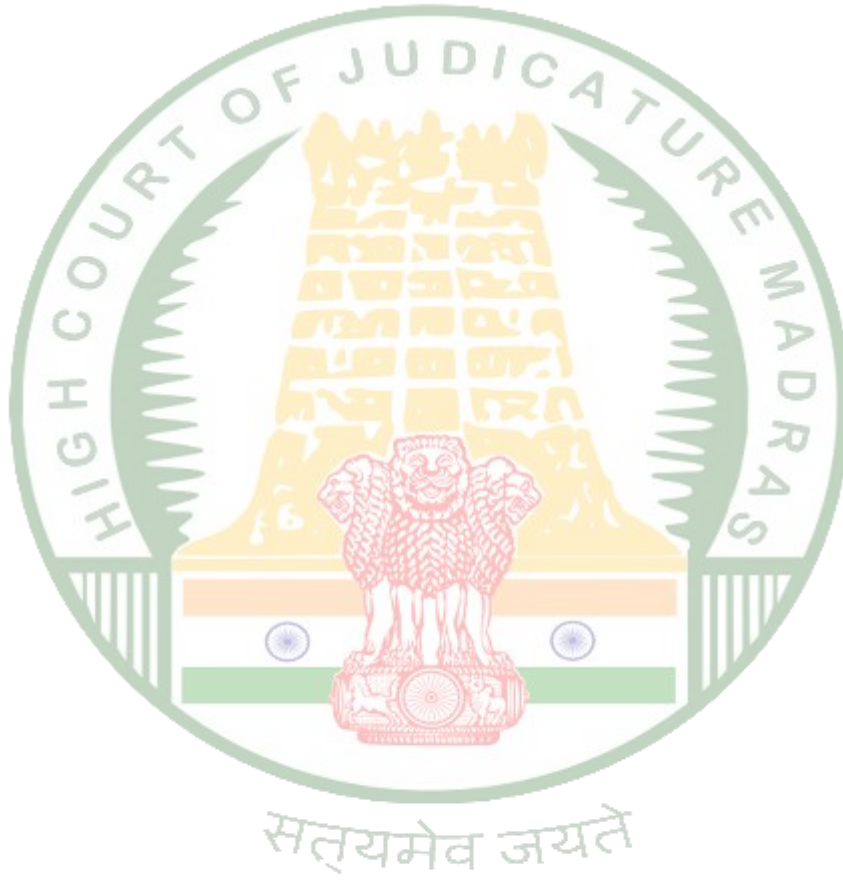
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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

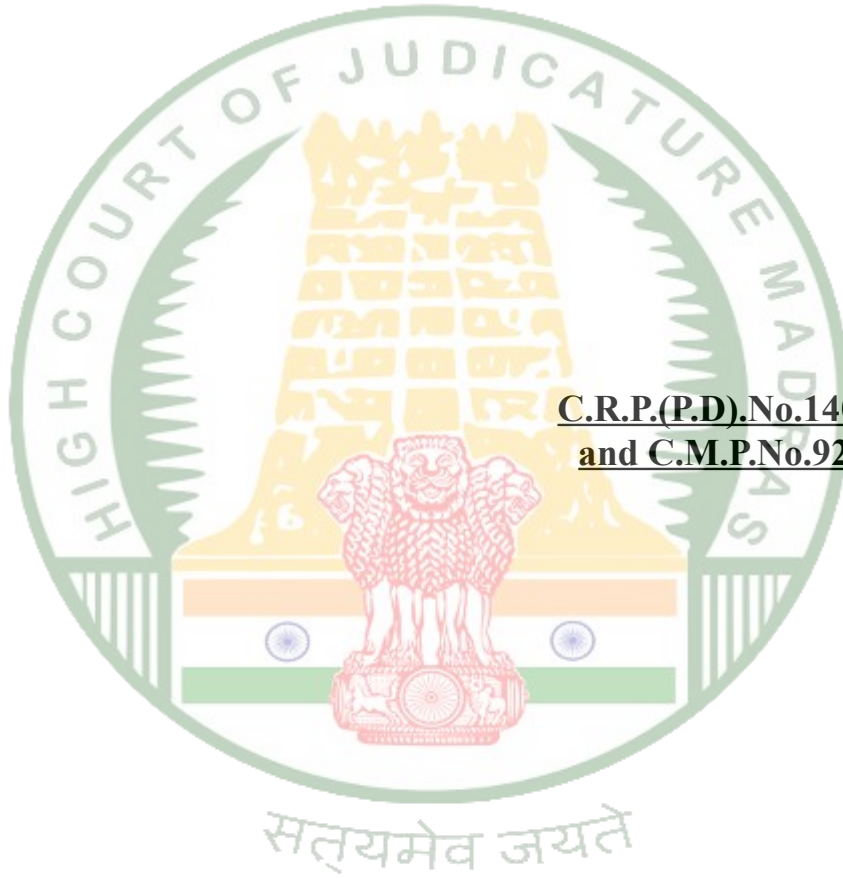


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V.SIVAGNANAM.J,

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