

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No.2569 of 2018
and C.M.P.No.15505 of 2018

1. Viswanathan
2. Devarajan
3. Pazhaniammal

.. Petitioners

Vs.

1. Suganthi
2. Suba

.... Respondents

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, praying to set aside the order passed by the Sub Court, Uthangarai in I.A.No.180 of 2018 in I.A.No.608 of 2016 in O.S.No.200 of 2014, dated 27.04.2018.

For Petitioners : Mr.N.Jayakumar

For Respondents : No appearance

ORDER

This revision is at the instance of the defendants in O.S.No.214 of

1999, against an order of the trial Court dismissing an application for scraping the Commissioner's report filed in the final decree proceedings in the said suit.

2. A preliminary decree for partition came to be passed on 20.09.2016. I.A.No.608 of 2016 was filed by the respondents for passing of a final decree in the suit. The trial Court appointed an Advocate Commissioner. The Commissioner inspected the properties and filed a report. The petitioners herein objected to the report on the ground that the Commissioner has clubbed the properties, subject matter of the suit, without specific sanction from the Court and had suggested the division of the property as clubbed by him. This according to the petitioners is impermissible. After filing the objection, the petitioners have also followed it up with an Interlocutory application in I.A.No.180 of 2018 seeking to scrap the report of the Commissioner.

3. The learned trial Judge who considered the application concluded that the petition to scrap the report without seeking appointment of a fresh Advocate Commissioner is not maintainable. The trial Court further held that it will be open to the petitioners herein to show that the Commissioner's report is wrong at the time of the hearing of the final decree

application and if the Court comes to the conclusion that the Commissioner had exceeded the warrant or he has done something contrary to law, the Court can always scrap the report and appoint a Commissioner to visit the suit property or direct the same commissioner to visit the property again and suggest methods of division. On the above conclusions, the learned trial Judge dismissed the application. Aggrieved, the petitioners have come up with this Civil Revision petition. I have heard Mr.N.Jayakumar, learned counsel appearing for the petitioners.

4. Mr.N.Jayakumar, learned counsel appearing for the petitioners would vehemently contend that the trial Court was not right in dismissing the application for scraping the report of the Commissioner in as much as the Commissioner had exceeded the scope of the warrant and without any direction from the Court, clubbed the properties and suggested methods of division.

5. Though, I find some force in the contentions of the learned counsel, I do not think I should interfere at this stage in this proceedings. As rightly pointed out by the trial Court, the petitioners are at liberty to argue before the trial Court itself, as to how the Commissioner's report is defective and why it should not form the basis for the final decree. If the

petitioners are able to convince the trial Court about their stand, then it is always open to the trial Court to scrap the report and appoint a new Commissioner or reissue the warrant to the very same Commissioner to measure the property and suggest modes of division. The trial Court also in its order has only said that it is open to the petitioners to show that the report is flawed.

6. In view of the same, I do not think that I should interfere with the order of the trial Court at this stage. The Civil Revision petition therefore fails and it is accordingly dismissed. It is made clear that it will be open to the petitioners to demonstrate that the Commissioner's report is flawed and if the trial Court accepts their contention, the trial Court will do well to appoint another Commissioner or reissue the warrant to the same Commissioner to inspect the property and suggest modes of division. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

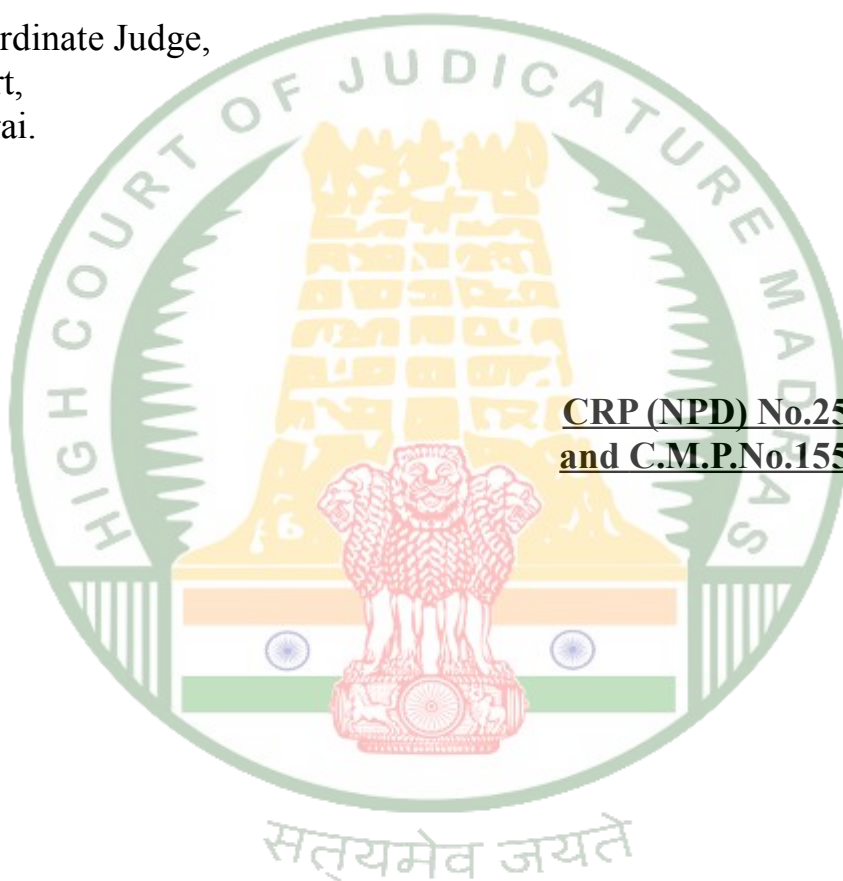
Speaking order / Non speaking order

R.SUBRAMANIAN, J.

vum

To

The subordinate Judge,
Sub Court,
Uthangarai.



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