

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 23.11.2020]

[ORDERS PRONOUNCED ON : 15.12.2020]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP (PD).No.1899 of 2020

and

C.M.P.No.11559 of 2020

Karpagam

... Petitioner

.. Vs ..

- 1.S.Ravichandran
- 2.R.Rukmani Ammal
- 3.R.Balakumar
- 4.R.Senthilkumar
- 5.R.Arunkumar
- 6.B.V.Venugopal
- 7.V.Venkatasamy
- 8.V.Sornalatha
- 9.V.Sangeetha
- 10.P.Saravanakumar
- 11.P.Loganathan
- 12.P.Hemalatha
- 13.Mageswari

... Respondents

PRAYER: Petition filed under Section 227 of Constitution of India, praying, against the docket order of the Advocate Commissioner Application in I.A.No.3 of 2020 in O.S.No.4 of 2020 dated 12.03.2020

passed by the learned Additional District and Sessions Judge,
Dharmapuri.

For Petitioner : Mr.R.Sundarapandiyan
For R1 : Mr.V.Sakkarapani
For R2, R3, R4, R12 : No appearance
For R5 & R6 : Unclaimed
For R7 to R9 : Refused
For R10, R11 & R13 : Not ready in notice

ORDER

The 13th defendant in the suit is the revision petitioner herein.

2. The first respondent has filed a suit in O.S.No.4 of 2020 for the relief of declaration of title and to declare the Sale Deed dated 21.10.1994, 28.05.2001 and the Settlement Deed dated 26.03.2013 are null and void.

3. Pending suit, he has filed I.A.No.3 of 2020 for appointment of Advocate Commissioner to note down the physical feature under Order 26 Rule 9 C.P.C. I.A is pending for final disposal as could be seen from the docket sheet produced.

4. The last hearing date that was appeared in the docket sheet is 21.09.2020, it is posted for counter of R1 to R5, R7 to R13 and appearance of R6, R8, R9 and the Advocate Commissioner's Report and hence the present application is filed by the 16th defendant alleging that when the appointment of Advocate Commissioner petition itself is pending for the reasons not known and all of a sudden the learned Additional District Judge, Dharmapuri has made an endorsement for Advocate Commissioner's Report on 07.09.2020 also on 21.09.2020 and hence when the petition for appointment of Advocate Commissioner is pending how come an Advocate Commissioner has been appointed by the Court and hence on enquiry he find that the Advocate Commissioner is going to inspect the suit property and hence, filed the C.R.P.

5. After hearing the submissions of the learned counsel by an order dated 05.11.2020, this Court has called for a report from the learned Principal District Judge, Dharmapuri as to when the Advocate Commissioner was appointed in the said I.A.3/2020. Since there is no order of appointment as could be seen in the docket sheet.

6. Report of the learned Additional District and Sessions Judge, Dharmapuri was received. In the said report, the learned Additional District Judge, Dharmapuri by a communication dated 19.11.2020 have stated that he has passed a detailed order in a separate sheet not in the docket. In the separate sheet he has stated that an Advocate by name E.Munusamy was appointed as an Advocate Commissioner directed to inspect the suit property and fix the remuneration and I find that the docket order does not disclose the separate sheet as stated by me.

7. The learned counsel for the petitioner could contend that when the application for appointment of Advocate Commissioner is kept pending for appearance of some of the respondent and counter of some of the respondent in a separate docket order, the learned Additional District Judge, Dharmapuri chosen to order appointment of Advocate Commissioner to note down the physical feature.

8. I have perused the 'A' Diary extract. The 'A' Diary extract in respect of I.A.3/2009 does not disclose the alleged separate docket order. From 20.07.2020 till 17.08.2020, there is no reference as to the Advocate Commissioner nor any other entry relating to appointment of Advocate Commissioner only in the 'A' Diary to the extent of 79 entry on

07.09.2020 for Advocate Commissioner Report was returned. I find that the alleged docket order appointing Advocate and also allowed him to inspect the property. The copies send by the learned Additional District Judge, Dharmapuri showing as if a docket order has been passed on 12.03.2020 whereby the Advocate Commissioner was inspected. This Court has seen the order. In the middle of the portion it is stated as if, in the result the petition is allowed. This Court is unable to understand the language used by the learned Additional District Judge.

9. When the matter is pending for service of appearance of R6 and R8 and for the counter of other respondents as stated supra, it is not known how the learned Additional District Judge has passed an order allowing the I.A.No.3/2020 and hence in the interest of justice, the following order is passed:-

(i) This Civil Revision Petition is allowed. No costs. Consequently, connected C.M.P is closed.

(ii) The Advocate Commissioner so appointed pursuant to the alleged docket order dated 12.03.2020 is hereby set aside.

(ii) If any report has already been filed by the said Advocate Commissioner, the same shall stand scraped and I.A.No3/2020 shall be decided in accordance with law.

(iii) In view of the above facts, I am of the considered view that conduce of this case by the said Judge may not be proper in the future and hence in exercise of powers conferred upon this Court, this Court direct to transfer O.S.No.4 of 2020 along with I.A.3/2020 on the file of the learned Principal District Judge, Dharmapuri.

(iv) The learned Principal District Judge is directed to dispose of the I.A. in the manner known to law.

(v) As observed earlier the order appointing the Advocate Commissioner on 12.03.2020 on the alleged docket order is hereby set aside and the report shall also stand scraped.

सत्यमेव जयते 15.12.2020

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Speaking Order: Yes/No

Internet: Yes/No

To
The Additional District and Sessions Judge, Dharmapuri.

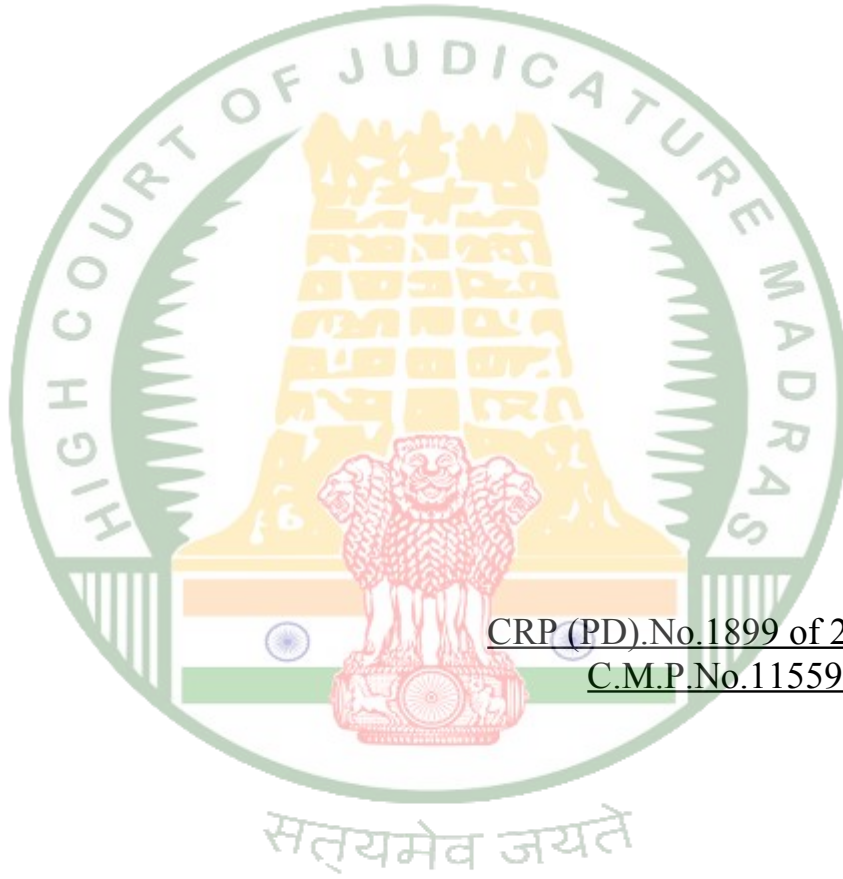


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RMT.TEEKAA RAMAN,J.,

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