

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. PD 4245 of 2019

and

C.M.P. 27691 of 2019

1. M.Ramasamy
2. M.Subramaniam
3. C.Ramathal
4. C.Chandramoorthy
5. G.Balakrishnan

... Petitioners

Versus

1. Arulmigu Vazhaithottathu
Ayyan Thirukoil,
rep. by its Asst. Commissioner/
Executive Officer,
V.Ayyampalayam,
Palladam Tk, Tiruppur Dt.

2. S.Suppathal
3. M.Meenakshi

... Respondents

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the Fair and decretal order dated 05.03.2019 passed in I.A. 875 of 2018 in O.S. 256 of 2004 on the file of the District Munsif Court, Palladam.

For Petitioner : Mr.K.Govi Ganesan

ORDER

This Civil Revision Petition has been filed against the order dismissing the petitioners application to appoint Advocate Commissioner to note down the physical features of the suit property.

2. The petitioners are the plaintiffs. They have filed a suit for partition and separate possession. Pending Suit, after commencement of trial, and after commencement of plaintiffs evidence, the petitioners/plaintiffs have filed an application seeking for appointment of Advocate Commissioner to note down the physical features, on the ground that, a cart track, in which the respondents/defendants are taking steps to put up a construction. The respondents are disputing the existence of cart track, and alleging that they are in possession of the property. Hence, the petitioners have filed an application to appoint an Advocate Commissioner to visit the property, and note down the physical features. The Trial Court has dismissed the above application holding that, the suit has been filed for partition,

based on a joint possession, and claiming 1/6th share in the suit property. Further, in the above suit, the plaintiffs right and share alone can be decided, however, the existence of cart track in the suit property, and the possession of the parties cannot be decided. Hence, the appointment of advocate commissioner is not necessary, and dismissed the application. Challenging the same, the present Civil Revision Petition has been filed.

3. I have heard and considered the submissions of the learned counsel appearing for petitioners, and perused the records carefully.

4. In a suit for partition, it is for the plaintiffs to prove their right over the suit property, and get a decree. While considering the application, the Trial Court has clearly stated that, in a suit for partition, there is no necessity to find out any cart track exist. Hence, there is no necessity to appoint an advocate commissioner, that too, after the commencement of trial. Considering the facts and circumstances, the Trial Court has rightly dismissed the application. Therefore, there is no illegality or irregularity in the order passed by the Trial Court, and I find no merit in this Civil Revision Petition. Accordingly, the Civil

Revision Petition stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition in C.M.P. 27691 of 2019 is closed.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

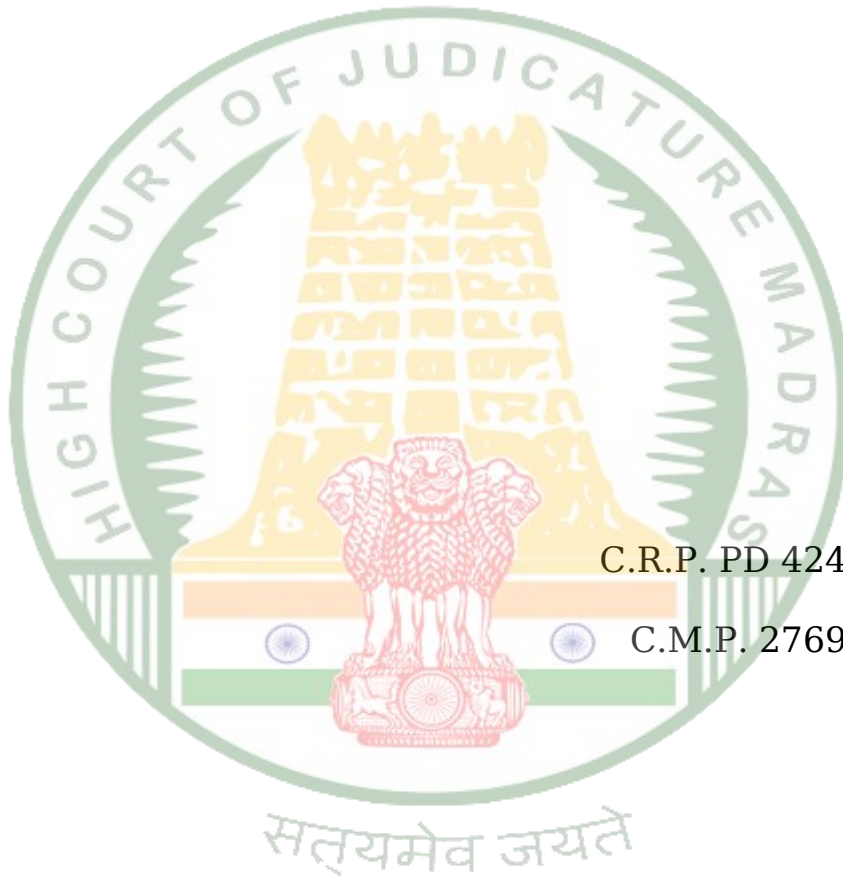
District Munsif,
Palladam.



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V.BHARATHIDASAN,J.

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