

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.905 of 2017
& C.M.P.No.4435 of 2017

M.Gokilam

.. Petitioner/Plaintiff

Vs.

1.Ramathal

2.Palanisamy

.. Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 20.12.2016 made in I.A.No.1041 of 2016 in O.S.No.42 of 2015 on the file of the I Additional District and Sessions Court, Tiruppur.

For Petitioner : Mr.K.S.Karthik Raja

For Respondents : No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 20.12.2016 made in I.A.No.1041 of 2016 in O.S.No.42 of 2015 on the file of the I Additional District and Sessions Court, Tiruppur.

2.The petitioner is the plaintiff and the respondents are defendants in O.S.No.42 of 2015 on the file of the I Additional District and Sessions Court, Tiruppur. The petitioner filed the said suit for declaration, recovery of possession and for mandatory injunction. The respondents filed written statement on 22.09.2015 and are contesting the suit. The respondents also filed I.A.No.1041 of 2016 under Order XXVI Rule 9 and Section 151 C.P.C. to reopen I.A.No.1677 of 2015 and re-issue of warrant to the Commissioner with the assistance of surveyor to measure the property. According to the respondents, the petitioner is stranger to the suit property. The Advocate Commissioner appointed earlier inspected and measured the property without giving notice to the respondents. The respondents also stated that without help of Taluk Surveyor, the property cannot be

measured. In such circumstances, the re-issue of warrant to the Commissioner is very much essential to prove their case.

3.The petitioner filed counter affidavit and opposed the said petition stating that in the earlier petition in I.A.No.566 of 2015 filed by them, the Advocate Commissioner was appointed to inspect the suit property. The Advocate Commissioner inspected the suit property and filed the report along with plan. The report of the Advocate Commissioner and plan were marked as Exs.C1 and C2 without any objection of the respondents. Hence, when an earlier report is available, the second petition is not maintainable.

4.The learned Judge allowed the Interlocutory Application holding that the Advocate Commissioner visited and measured the property and filed report without giving notice to the respondents.

5.Against the said order dated 20.12.2016 made in I.A.No.1041 of

2016 in O.S.No.42 of 2015, the present Civil Revision Petition is filed.

6.The learned counsel appearing for the petitioner submitted that the learned Judge failed to see that the respondents have not objected to the earlier report of the Advocate Commissioner and having accepted the Commissioner's report, the present application is not maintainable. The report and plan of the earlier Commissioner were marked as Exs.C1 and C2 and the report has not been objected and scraped. When the respondents have failed to take steps to object or scrap earlier report, the question of re-issue of warrant arise. The learned Judge failed to see that the respondents have only prayed for measuring the physical features of the property for which Town Surveyor is not necessary and prayed for allowing the Civil Revision Petition.

7.Though notice have been served on the respondents and their names are printed in the cause list, there is no representation for them either in person or through counsel.

8.Heard the learned counsel appearing for the petitioner and perused

the entire materials available on record.

9.From the materials available on record, it is seen that in the earlier petition i.e. in I.A.No.566 of 2015 filed by the petitioner, an Advocate Commissioner was appointed to measure the suit property and he also filed his report along with plan. The report and plan were marked as Exs.C1 and C2. From the materials on record, it is seen that the respondents have not filed any objection or sought for scraping earlier report. The respondents have sought for appointment of Advocate Commissioner to note down the physical features of the suit property and to file a detailed report and plan. An Advocate Commissioner was already appointed and filed his report which is on record. In such a case, re-issue of warrant does not arise. The learned Judge, without properly appreciating this fact on record, erroneously allowed the application on the ground that the Advocate Commissioner did not issue notice to the respondents. The order of the learned Judge suffers from irregularity and illegality. For the above reason, order of the learned Judge is liable to be set aside and it is hereby

set aside.

10.In the result, the Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

09.09.2020

Index : Yes/No

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To

I Additional District and Sessions Judge
Tiruppur.

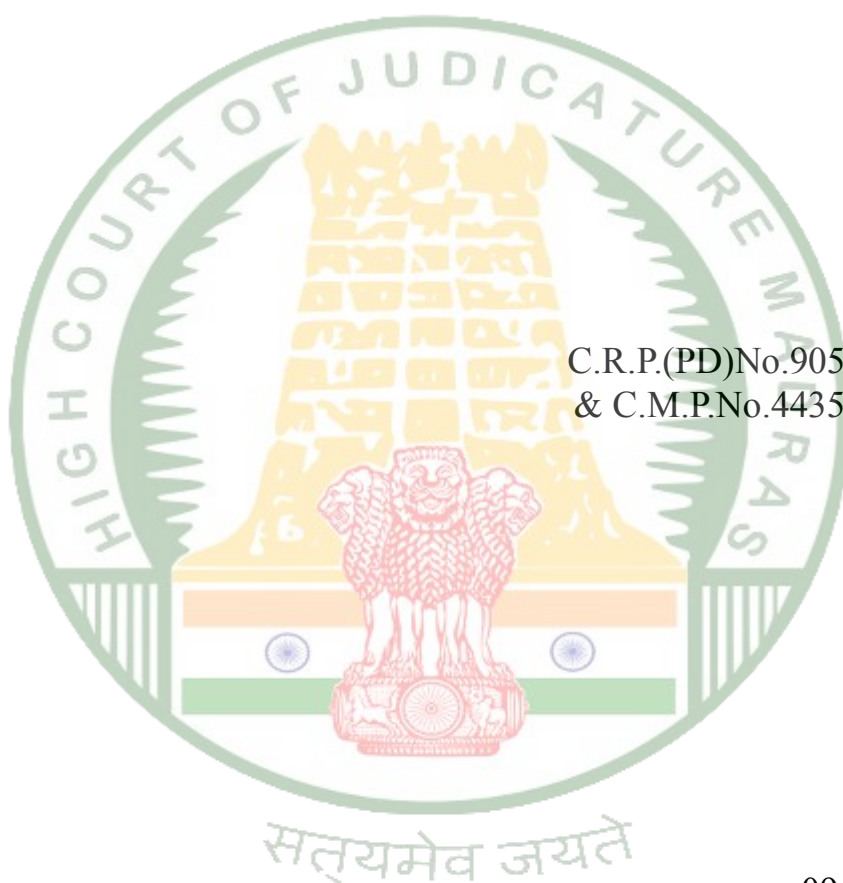


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V.M.VELUMANI, J.

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