

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.R.P.No.3465 of 2018
and
C.M.P.No.19419 of 2018

1.Suseela
2.Arunmozhi
3.Amudhaguna

Saravanan (died) ... Petitioners/Plaintiffs

Vs.

1.K. Maheswari
2.Shanmugam
3.Mohammed Thagi

... Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 03.07.2018 made in I.A.No.142/2018 in O.S.No.96/2014 on the file of the III Additional District Judge, Salem and to allow the civil revision petition.

For Petitioners : Mr. S. Stanley John

For Respondents 1 and 2 : Mr. V.P.Sengottuvel

O R D E R

The plaintiff in O.S.No.96/2014 whose application for appointment of Commissioner was dismissed by the trial Court have come up with this revision.

2. The suit in O.S.No.96/2014 was laid by the plaintiffs / petitioners herein seeking a declaration of their title in respect of an extent of 11,505 sq.ft of land on the strength of the sale deed dated 12.12.1994 registered as Document No.1544/1994. It is claimed that the property belonged to one Palaniappan by purchase under the said sale deed. On the death

of Palaniappan the property devolved on the plaintiffs who are his wife and children. It is further claimed that the first defendant who is the owner of property on the east and west of the suit property had encroached upon the suit property and he is attempting to lay a foundation by digging pits. The second defendant is an Engineer engaged by the first defendant for the purpose of construction. Therefore, the plaintiffs have come up with the suit for declaration and recovery of possession.

3. The suit is being resisted by defendants denying the title set up by the plaintiffs. Pending suit, the plaintiffs filed an application in I.A.No.142/2018 seeking appointment of a Commissioner to measure the property and identify the property. The said application was resisted on the ground that since the suit is one for declaration and recovery of possession, there is no need for either measuring or identifying the property.

4. The trial Court upon consideration of the rival contentions dismissed the application holding that since the suit itself is one for declaration and recovery of possession there is no question of appointment of Commissioner. The trial Court also pointed out that the plaintiffs have not claimed that the defendants have encroached upon a particular extent of the property.

5. Heard, Mr.Stanely John for the petitioners and Mr.V.P.Sengottuvel for respondents 1 and 2. The suit being one for declaration and recovery of possession, I do not see any necessity for appointment of an Advocate Commissioner particularly in the absence of any dispute regarding identity of the suit property. If only the plaintiffs prove the title, they are entitled to succeed. Therefore, I do not find any irregularity or illegality in the order of the trial Court.

6. Hence, the civil revision petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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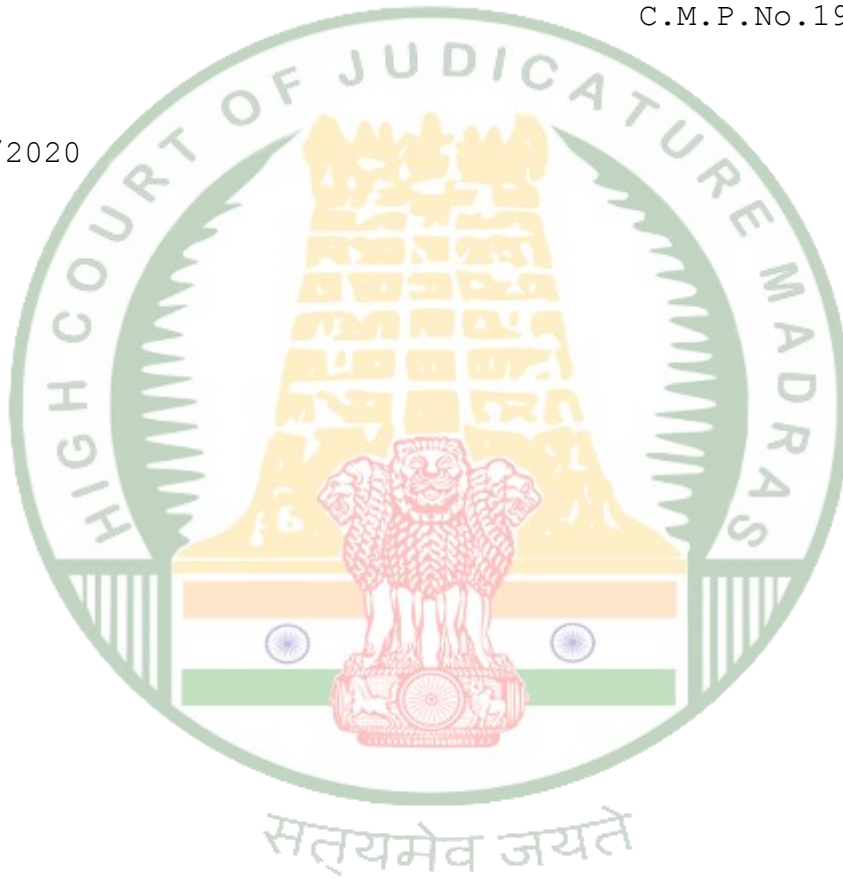
Sub Assistant Registrar

To

The III Additional District Judge,
Salem.

C.R.P.No.3465 of 2018
and
C.M.P.No.19419 of 2018

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srg 24/09/2020



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