

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2021

CORAM

THE HONOURABLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN

CRP. (PD) No. 79 of 2021

and C.M.P. No.625 of 2021

1.Saravanan
2.Vadivelu

... Petitioners

Vs

1.Pachaiammal
2.Gowri
3.M/s. Airtel Co. Ltd.,
Head Office, (Registered Office),
Rep. by its Chief Manager,
No.H5/12, Qutab Ambience (at Qutubinar),
Mehrauli Road, New Delhi – 110 030.

4.M/s. Airtel Co. Ltd.,
Zonal Office, Rep. by its Zonal Branch Manager,
No.3, Mariyamman Koil Street,
Elaipilaichavady,
Pondicherry – 5.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order passed by the learned II Additional District Judge, Pondicherry in I.A. No.447/2020 in O.S. No.76/2018, dated 14.10.2020.

For Petitioners

: Mr. B.Balavijayan

O R D E R

This Civil Revision Petition has been filed against the order passed by the II Additional District Judge, Pondicherry, in I.A. No.447 of 2020 in O.S. No.76 of 2018 dated 14.10.2020.

2. The first respondent plaintiff had filed a suit for partition. The defendants 1 and 2 have denied the plaintiff's legal heirship status itself and her right as co-owner. When the matter was pending, the first respondent had filed a Interlocutory Application in I.A. No.447 of 2020 for appointing an Advocate Commissioner to note down the physical feature of the suit property. It is seen that there is a dispute between both the parties regarding the extent of property whether 2 kuzhis and 2 veesams or 4 kuzhis and 4 veesams as alleged by the parties concerned.

3. The Court below had correctly observed that in a partition suit there cannot be an appointment of Advocate Commissioner with respect to the construction of building in the suit property, but when there is dispute between the parties with regard to the extent of property itself, there can be appointment of Advocate Commissioner to note down the physical features of the property. Accordingly, the Court below appointed an Advocate Commissioner to visit the scheduled mentioned property along with the qualified surveyor to measure the

suit scheduled property in the light of the title documents of both parties and with revenue record and to file a detailed report or before 18.11.2020. Aggrieved by the said order, the petitioners herein contends that the appointment of Advocate Commissioner for ascertaining the extent of property in a partition suit in a pre-trial stage is totally unwarranted and hence filed this present Civil Revision Petition.

4. As rightly pointed out by the Court below that when there is dispute with regard to the extent of property, the Court cannot blindly accept one person's averments and pass orders. Hence, it is necessary for the Court to impart justice in the manner known to law. Only in order to render justice to the parties, the Court below has ordered for appointment of Advocate Commissioner to measure the property along with a qualified surveyor and to file a detailed report.

5. This court do not find any infirmity or irregularity in the order passed by the II Additional District Judge, Puducherry, in I.A. No.447 of 2020 in O.S. No.76 of 2018 dated 14.10.2020. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.01.2021

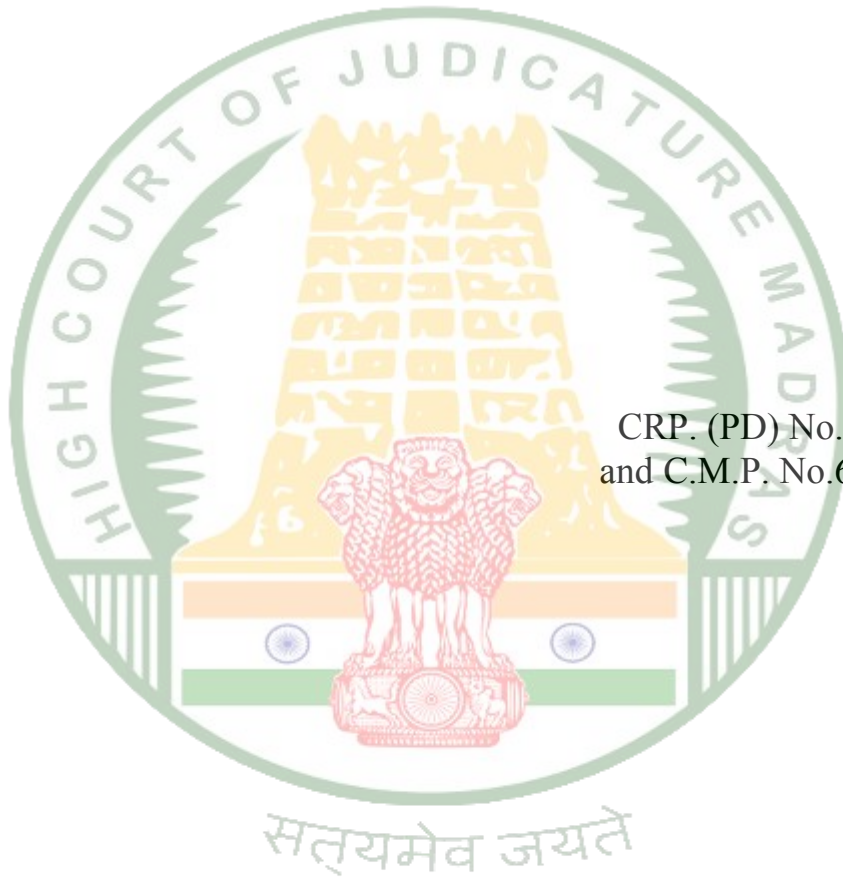
Index:Yes/No

Speaking order / Non speaking order

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V.BHAVANI SUBBAROYAN. J.,

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