

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

C.R.P. (NPD) .No.1632 of 2004

and C.M.P.No.12864 of 2004

1. Selvaraj

2. Renuka

... Petitioners

Vs.

1. C.Mohamed Ali (Deceased)

2. M.Mumtaz Begum

3. Noorjahan

4. Mehrojahan

5. Bowja Begum

6. Maideen Basha

7. Amsa Begum

8. Askar Ali

9. Minor Aazaad Ali

10. Minor Fathima Begum

(R9 & R10 represented by  
their mother and next  
friend and guardian  
the second respondent)

(R2 to R10 brought on record as LRs of the  
deceased sole respondent C.Mohamed Ali vide Court order  
dated 18.12.2017 made in CMP.Nos.215 to  
217 of 2011 in C.R.P.No.1632 of 2004)

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of  
the Constitution of India, to set aside the fair and decretal  
order dated 20.04.2004 made in E.A.No.Nil of 2004 in E.P.No.178  
of 2002 in O.S.No.255 of 1987 on the file of the learned  
Principal District Munsif, Villupuram.

For Petitioners : Mr.T.S.Baskaran

For Respondents : No appearance

ORDER

This Civil Revision Petition is directed as against  
the fair and decretal order dated 20.04.2004 passed by the  
learned Principal District Munsif, Villupuram, in E.A.No.Nil of  
2004 in E.P.No.178 of 2002 in O.S.No.255 of 1987, thereby  
rejecting the application for appointment of the Advocate  
Commissioner.

2. The petitioners are the defendants in the suit filed by the deceased respondent herein for declaration and recovery of possession. Though initially the suit was dismissed, in the appeal suit, it was decreed and same was confirmed in S.A.No.1401 of 1991 by the judgment and decree dated 06.12.2001. On the strength of the said decree, the deceased respondent filed execution petition in E.P.No.178 of 2002. While pending the execution petition, the petitioners filed a petition for appointment of Advocate Commissioner to survey the B schedule property with the help of surveyor and to note down the physical features and its measures. The execution Court dismissed the above said application against which, the present revision petition has been filed.

3. The learned counsel appearing for the petitioners would submit that while pending the suit, the plaintiff/deceased respondent put up a construction in the B schedule property. Initially the suit was dismissed and thereafter it was decreed by the appellate Court. Therefore, it is just and necessary to appoint an Advocate Commissioner to survey the B schedule property and also to verify whether any construction put up by the respondents or not with the help of the surveyor.

4. It is seen that the suit is filed for declaration and recovery of possession. On perusal of suit schedule property in the decree as well as the execution proceeding, both are one among the same. Though the learned counsel appearing for the petitioners contended that the plaintiff/deceased respondent put up some construction in the B schedule property, the same will not change the suit schedule property and no impediment for the Execution Court to proceed further. Therefore, the Court below rightly rejected the petition filed by the petitioners for appointment of Advocate Commissioner. This Court finds no infirmity or illegality in the order passed by the trial Court. However, the execution petition is of the year 2004 and it is pending before the Execution Court for the past 16 years, the Execution Court viz., the Principal District Munsif Court, Villupuram, is directed to complete the execution proceedings within a period of three months from the date of the receipt of a copy of this Order.

5. Accordingly, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS IV )

/true copy/

Sub Asst. Registrar

rts

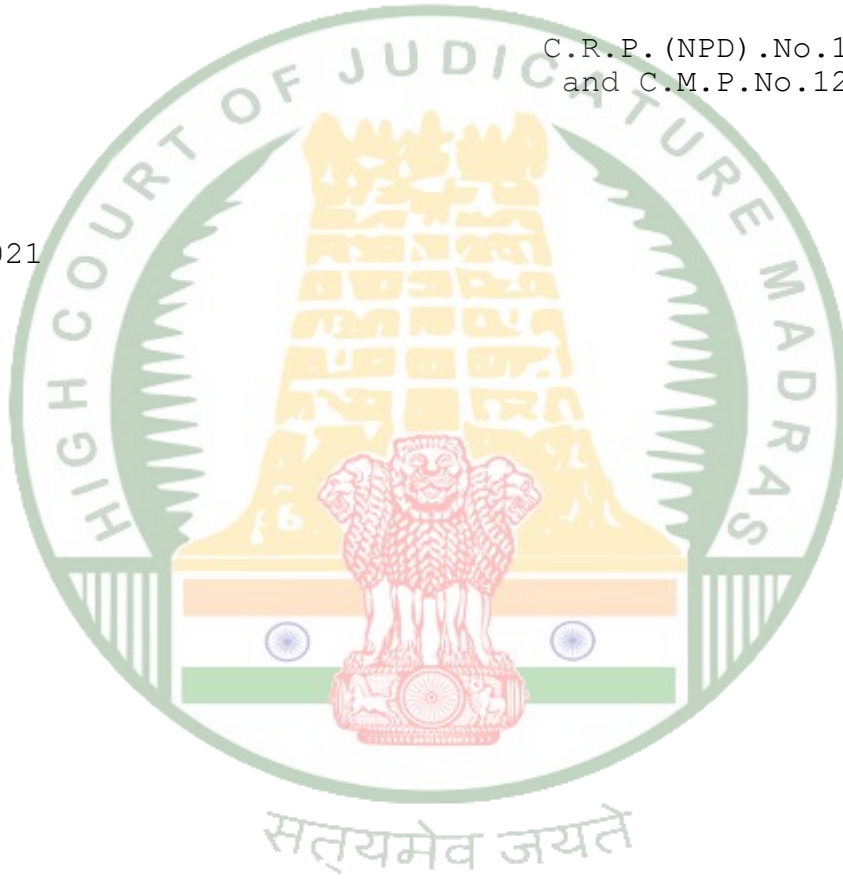
To

1. The Principal District Munsif,  
Villupuram.
2. The Section Officer,  
V.R. Section,  
Madras High Court,  
Chennai.

+1 cc to Mr.T.S.Baskaran Advocate sr5159

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