

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2021

CORAM:

**THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN**

**CRP(PD).No.2029 of 2016**

1. Palanivel

2. P.Uma

... Petitioners

Vs.

1. Nagarajan

2. Abdulsalam

3. Nabi

4. Irunbeevi

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 02.09.2015 in I.A.No.320 of 2014 in O.S.No.101 of 2014 on the file of the District Munsif Court at Thiruthuraipoondi District.

For Petitioners : Mr.S.Arivazhagan

For Respondents : No Appearance

**ORDER**

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.320 of 2014 in O.S.No.101 of 2014 dated 02.09.2015 on the file of the learned District Munsif, Thiruthuraipoondi District, thereby, dismissing the petition seeking for appointment of an Advocate Commissioner.

2. The petitioners are the plaintiffs. They filed the said suit as against the respondents for permanent injunction, in respect of the suit property. While pending the suit, the petitioners filed a petition for appointment of Advocate Commissioner to note down the physical features of the suit schedule property. The reasons mentioned in the affidavit filed in support of the petition is that the petitioners refused to sell the property to the respondents and as such, there was previous enmity between them. The respondents are constructing building in their property which is situated adjacent to the property of the petitioners. While constructing, they dump the wastage of the construction material and also attempted to lay the pipe line in the suit property. Therefore, the petitioners seek for appointment of Advocate Commissioner to note down the physical features of the suit property.

3. On a perusal of the petition, it is evident that the petitioners sought for appointment of Advocate Commissioner to inspect the suit property and also verify the revenue records and submit a report. There is a dispute in respect of title over the property between the petitioners and respondents herein. Further, the suit itself filed for permanent injunction in which the Advocate Commissioner cannot be appointed. It is settled provisions of law that the appointment of Advocate Commissioner in the suit for injunction would amount to collection of evidence. The concerned parties have to prove their case by letting evidence.

4. In this regard, the learned counsel for the petitioners relied upon the judgment of this Court passed in C.R.P.No. 1521 of 2015, in which, this Court dismissed the Civil Revision Petition as against an application for appointment of Advocate Commissioner in a suit for permanent injunction. In the above case, the suit was filed by the plaintiffs for declaration and injunction. There was specific averment that dispute in respect of identity of the suit property. Further, it was alleged therein that the defendants/respondents attempted to damage the ridges and also attempted

to encroach the suit property and alter the physical features of the suit property. Therefore, the Court below appointed the Advocate Commissioner to identify the suit property and the same was confirmed by this Court. As such, the above judgment cited by the learned counsel for the petitioner is not helpful to the case on hand.

5. Admittedly, the present suit is filed for permanent injunction in which the Advocate Commissioner cannot be appointed to note down the physical features of the suit property. Therefore, the trial Court rightly dismissed the same and this Court finds no infirmity or illegality in the order passed by the Court below.

6. Accordingly, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

18.02.2021

Speaking/Non-speaking order  
Index : Yes/No  
kv

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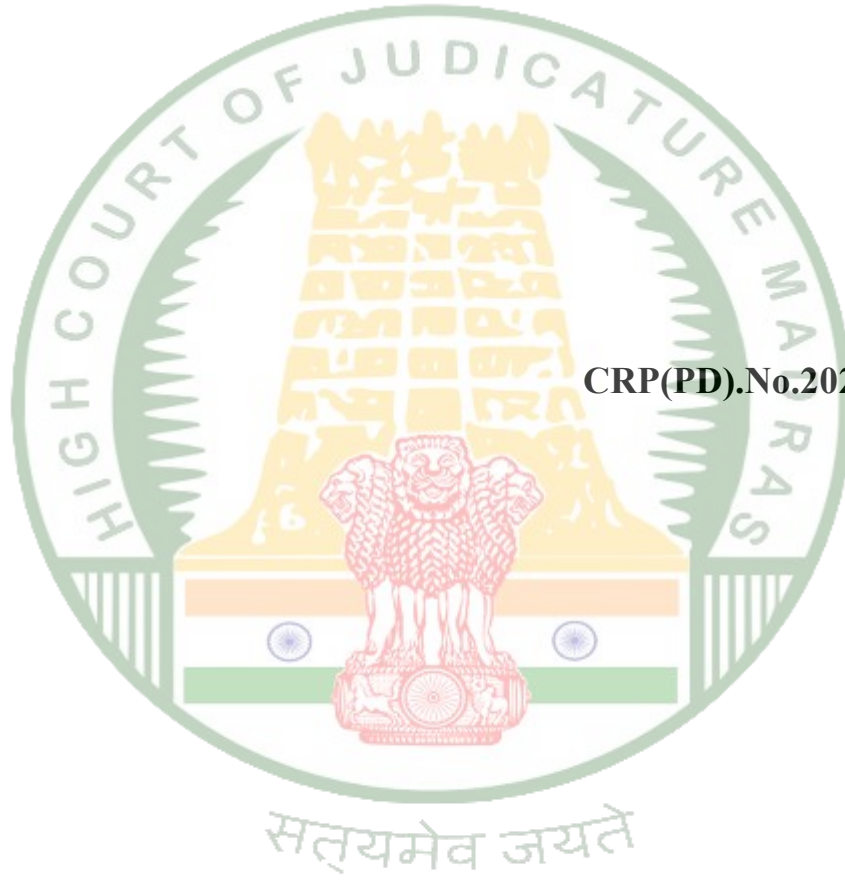
To

The District Munsif Court,  
Thiruthuraipoondi District.



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**G.K.ILANTHIRAIYAN,J.**



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