

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (PD) No.905 of 2021
and
C.M.P.No.7399 of 2021

The India Ministry Fellowship
Rep.by its Managing Trust
Mrs.Nalini Arles

.. Plaintiff/Petitioner/Petitioner

Vs

1.George Babu
2.Rebecca Thangamani
3.Mano @ Manohar

..Defendants 1 to 3/ Respondent 1 to 3
/Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and decretal order dated 06.03.2020 in I.A.No.2 of 2019 in O.S.No.171 of 2018 on the file of the I Additional District Judge, Tiruvallur.

For Petitioner

..

Ms.Paul and Paul

For Respondent

..

No appearance

ORDER

The Revision Petition has been filed at the instance of the plaintiff in O.S.No.171 of 2018 now pending on the file of the I Additional District Court.

2.The plaintiff is aggrieved by an order dated 06.03.2020 in I.A.No.2 of 2019 in O.S.No.171 of 2018. The said application came to be filed by the present petitioner in their capacity as plaintiff in the suit. The Application had been filed under Section 151 of Code Procedure Code, 1908 requesting the Court to scrap the report filed by the Advocate Commissioner. The report was dated 07.08.2019. It had been stated that an Advocate Commissioner had been appointed by the Court. After lapse of quite considerable time a report was filed. It had been stated that the report had gone beyond the scope of the warrant and beyond the task assigned to the Advocate Commissioner. The task assigned to the Advocate Commissioner was only to note down the physical features of the suit schedule property along with the help of a Taluk Surveyor.

3.However, the report mentioned about the details as to the person to whom the building belongs and also had stated about the occupation of nearly about 75% according to the Advocate Commissioner, of the

building. These aspects, according to the learned counsel who now appears for the revision petitioner are much beyond the scope as stated in the warrant and it was unwarranted on the part of the Advocate Commissioner to give such an opinion, particularly about the possession and also about the ownership of the building.

4.It is under these circumstances, that the said application had been filed before the learned I Additional District Court, Thiruvallur. The learned Judge however had stated that the report of the Advocate Commissioner is irrelevant with respect to any opinion on possession and also with respect to giving any opinion on the persons who are in occupation. It had been stated that the relevance of the Commissioner's report is limited to the measurements found therein with regard to the physical features. It had been stated that with respect to that aspect namely, the physical features of the building and the measurements given therein, the present petitioner had not raised any objection before the Trial Court. On these grounds, the learned Judge had refused to scrap the report of the Advocate Commissioner.

5.Heard the learned counsel for the petitioner.

6.I am also confident that the learned I Additional District Judge, Tiruvallur, would restrict the analysis to the scope of the report of the Advocate Commissioner only to the extent to which the warrant had been issued to the Advocate Commissioner. Any additional finding will naturally be rejected and the tenor of the order now under revision also indicates that the learned Judge had also observed more or less the same view stating that the opinion of the Advocate Commissioner regarding possession and ownership are beyond the scope of the warrant. The present Revision Petition therefore requires no specific orders to be passed, except to reiterate the observations of the learned I Additional District Judge, Tiruvallur.

7.I am confident that the learned Judge would appreciate the report of the Advocate Commissioner in its true perspective and also reject those portions which are beyond the scope of the warrant. The petitioner / plaintiff, if they are so advised, may also summon the Advocate Commissioner and also test the report during the course of cross-examination. They may also during arguments, point out the portions which exceed the warrant and call upon the Court to reject those findings by the Advocate Commissioner and consider only those aspects which

are with respect to the issues in the suit and which necessitated the appointment of Advocate Commissioner.

8. With the above observations, the Civil Revision Petition is disposed of. No order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

21.04.2021

Internet: Yes/No
Index: Yes/No
smv

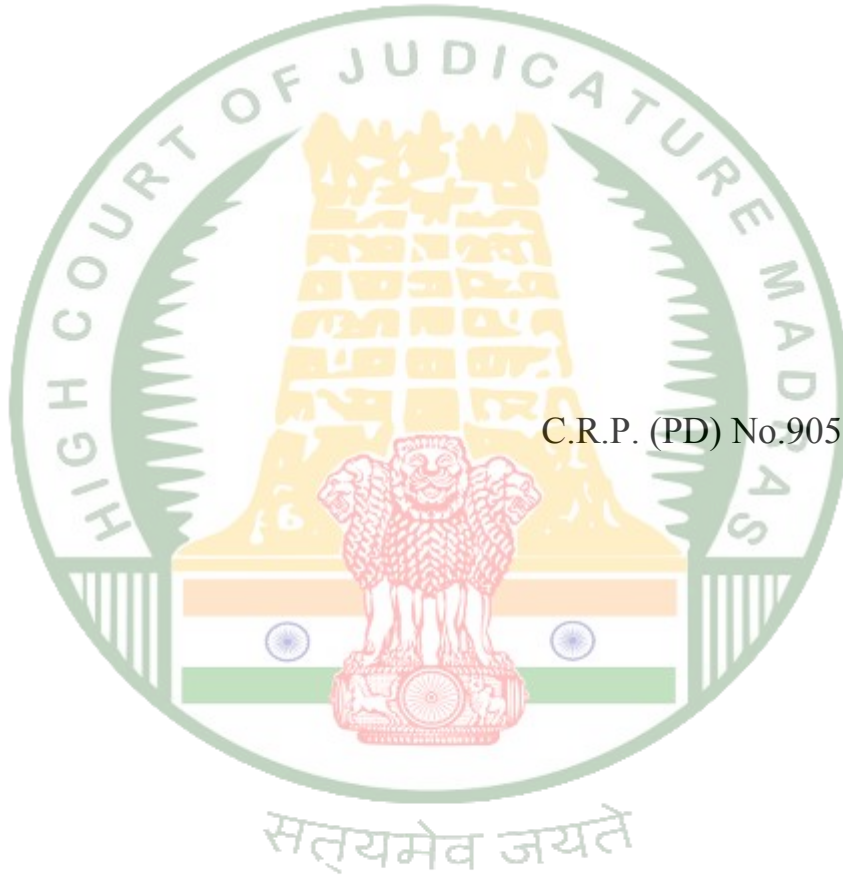
To
The I Additional District Court,
Tiruvallur.



WEB COPY

C.V.KARTHIKEYAN,J.

smv



C.R.P. (PD) No.905 of 2021

WEB COPY

21.04.2021