

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(PD).No.2407 of 2018
and C.M.P.No.14855 of 2018

S.Gopal

...Petitioner

Vs

1.Durai

2.Umadevi

3.The Tahsildar,
Tiruvallur,
Taluk Officer,
Tiruvallur.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, prayed to set aside the fair and decreetal order dated 10.04.2018 made in I.A.No.922 of 2017 in O.S.No.459 of 2007 on the file of the District Munsif, Tiruvallur.

For Petitioner

: Mrs.Srimathi

For R1 & R2

: No Apperance

For R3

: Mr.Y.T.Aravind Gosh

Additional Government Pleader

ORDER

This Civil Revision Petition has been filed against the order dated 10.04.2018 made in I.A.No.922 of 2017 in O.S.No.459 of 2007 on the file of the District Munsif, Tiruvallur.

2.The case of the petitioner is that I.A.No.922 of 2017 was filed for appointment of Advocate Commissioner with the assistance of the Surveyor to measure the Item Nos. 1 and 2 of the suit schedule property, the encroached portion in the suit items and note down the physical features of the suit schedule property. The Court below after hearing both the parties passed the following order:

“10.As per the plaint averments, the plaintiffs herein are claiming title over the suit property based upon his possession and enjoyment for several years and also based upon the Will dated 02.07.2004 executed by the plaintiffs' father. Therefore, when the title over the suit property is claimed based on the possession and enjoyment and also through Will dated 02.07.2004, it is the duty of the petitioner/plaintiff to prove his possession and enjoyment through admissible documents, and also to prove his possession and enjoyment through admissible

documents and also to prove the said Will dated 02.07.2004 as per Section 68 of the Indian Evidence Act. It is a settled principles of law that through an Advocate Commissioner one cannot collect evidence to prove his case, and the objection raised by the respondent that, the petitioner without knowing the exact location of his property has filed the suit and now wanted to identify the same through Advocate Commissioner deserves merits acceptance, and this Court is of considered view that this petition deserves no merit, and liable to be dismissed.

In the result, this petition is dismissed.”

By referring above, the Revision Petitioner submitted that the Court below has wrongly held that the application has been filed to collect the evidence to prove the case Therefore, he prayed to set aside the order passed by the Court below and remit back the matter for reconsideration.

3.Heard the learned counsel for the petitioner. Though notice was served and the name of the respondents 1 and 2 printed in the causelist, none appeared on behalf of the respondents 1 and 2.

4.On perusal of the affidavit and submissions made by the learned counsel for the petitioners, it appears that the application was filed to appoint the Advocate Commissioner only to measure the Item Nos.1 and 2 of the suit schedule property, the encroached portion in the suit items and note down the physical features of the suit schedule property and not to collect the evidence. The measuring of the property will help the Court below to render justice, therefore, the order passed by the Court below in I.A.No.922 of 2017 is set aside and the matter is remitted back to the Court below for re-consideration.

5.Accordingly, the Civil Revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

23.02.2021

Index: Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

rst

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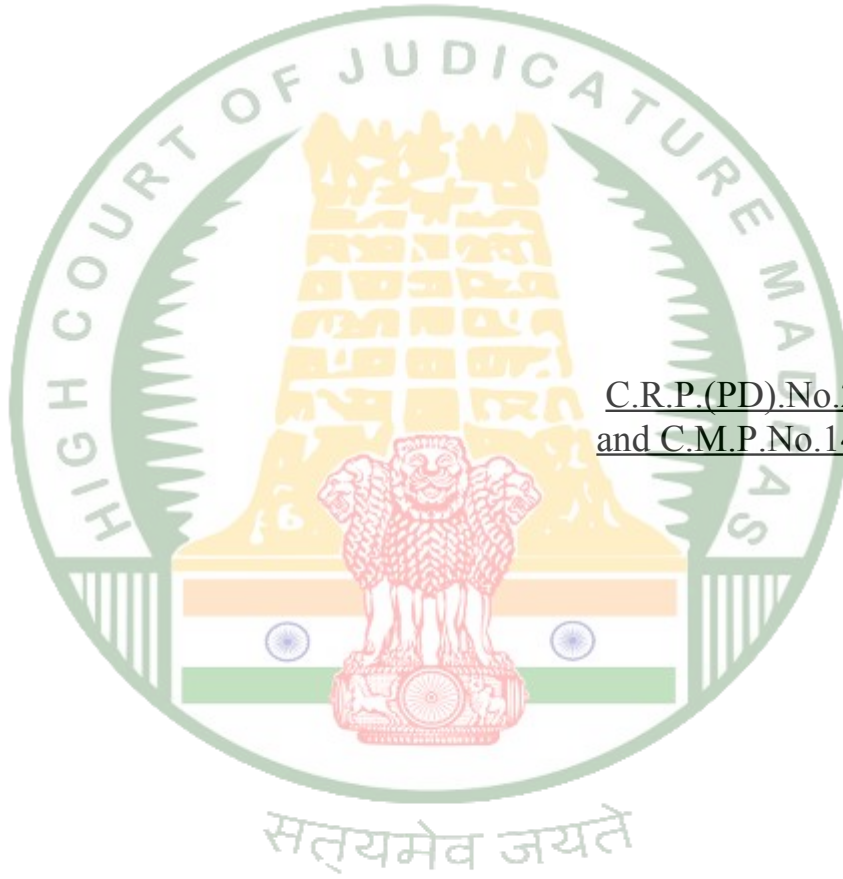
The District Munsif, Tiruvallur.



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KRISHNAN RAMASAMY,J.

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