



C.R.P. (PD) Nos. 1461 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.12.2021**

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

C.R.P. (PD) Nos.1461, 1466, 1462 & 1468 of 2019

C.R.P. (PD) No.1461 of 2019

1. Ramayal
2. Jayalakshmi

...Petitioners

Versus

1. Rukkmani
2. Bhuvaneswari
3. Ravikumar @ Palanisamy
4. Pappayammal
5. K.P.Myilsamy
6. Sedhu Madhavan
7. K.R.Pongiyannan
8. Chitra Devi

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 11.09.2018 in I.A. No.95 of 2018 in I.A. No.1041 of 2017 in O.S. No.88 of 2009 on the file of the District Munsif Court, Gobichettipalayam.

C.R.P. (PD) No.1462 of 2019

1. Ramayal
2. Jayalakshmi

...Petitioners



C.R.P. (PD) Nos. 1461 of 2019

Versus

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1. Rukkmani
2. Bhuvaneswari
3. Ravikumar @ Palanisamy
4. Pappayammal
5. K.P.Myilsamy
6. Sedhu Madhavan
7. K.R.Pongiyannan
8. Chitra Devi

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 13.12.2018 in I.A. No.233 of 2017 in O.S. No.88 of 2009 on the file of the District Munsif Court, Gobichettipalayam.

C.R.P. (PD) No.1466 of 2019

1. Ramayal
2. Jayalakshmi

...Petitioners

Versus

1. Rukkmani
2. Bhuvaneswari
3. Ravikumar @ Palanisamy
4. Pappayammal
5. K.P.Myilsamy
6. Sedhu Madhavan
7. K.R.Pongiyannan
8. Chitra Devi

...Respondents



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Civil Revision Petition is filed under Article 227 of the Constitution of

India, to set aside the fair and final order dated 13.12.2018 in I.A. No.1041 of 2017 in O.S. No.88 of 2009 on the file of the District Munsif Court, Gobichettipalayam.

C.R.P. (PD) No.1468 of 2019

1. Ramayal
2. Jayalakshmi

...Petitioners

Versus

1. Rukkmani
2. Bhuvaneswari
3. Ravikumar @ Palanisamy
4. Pappayammal
5. K.P.Myilsamy
6. Sedhu Madhavan
7. K.R.Pongiyannan
8. Chitra Devi

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 13.12.2018 in I.A. No.1047 of 2017 in O.S. No.88 of 2009 on the file of the District Munsif Court, Gobichettipalayam.

For Petitioners	: Mr. Saravanakumar
(in all C.R.P's)	for Mr. V.P.K.Gowtham
For Respondents 1-3	: Mr. P.Valliappan
(in all C.R.P's) 4 &8	: No appearance



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COMMON ORDER

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C.R.P. No.1461 of 2019 is directed against the order in I.A. No. 95 of 2018 in I.A. No. 1041 of 2017 filed by the defendant in the suit in O.S. No.88 of 2009 on the file of District Munsif Court, Gobichettipalayam.

C.R.P. No.1462 of 2019 is directed against the order in I.A. No.233 of 2018 in O.S. No.88 of 2009 allowing the application filed by the plaintiffs directing the defendants to produce the Will dated 03.03.2018.

C.R.P. No.1066 of 2019 is directed against the order in I.A. No.1041 of 2017 in O.S. No.88 of 2009 by the learned District Munsif Court, Gobichettipalayam, dismissing the petition filed by the revision petitioners to scrap the Advocate Commissioner's report who was appointed earlier by order of this Court in I.A. No.384 of 2009.

C.R.P. No.1468 of 2019 is directed against the order of learned District Munsif Court, Gobichettipalayam, dismissing the petition filed by the revision petitioner in I.A. No.1042 of 2017 in O.S. No.88 of 2009 for appointment of Advocate Commissioner to inspect the suit property and note down the physical features with the assistance of qualified Engineers of P.W.D.



2. The petitioners in these four revision petitions are the defendants in the suit in O.S. No.88 of 2009 which was filed by the respondents plaintiff as against the revision petitioners for grant of mandatory injunction to remove the wall alleged to have been constructed by the defendants thereby removing the encroachment made by the defendants in the suit and for consequential relief.

3. The suit property is described as a property admeasuring an extent of 60 feet East-West and 10 ft North – South. The wall constructed by the defendants is shown as A, B, C, D in the plaint plan. Based on several documents that were relied upon by the plaintiffs in the suit, it is alleged that the suit property was enjoyed by the plaintiffs as a cart track and that the portion of the cart track described in the plaint as suit property had been encroached by the defendants by putting up a wall which is shown as A, B, C, D in the plaint.

4. During pendency of the suit, the respondents have filed an application for appointment of Advocate Commissioner and the said application was allowed by directing the Advocate Commissioner to submit a report and plan drawn and surveyed by Surveyor showing the encroachment made by the defendants over the suit property. The Court specifically found that the



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Advocate Commissioner's report is necessary to resolve the dispute. The order

of appointment of Advocate Commissioner was also confirmed by this Court in a Civil Revision Petition filed by the revision petitioners earlier in C.R.P.(PD) No.422 of 2015. After the order of appointment of Advocate Commissioner, it is admitted that an Advocate Commissioner went and inspected the suit property and submitted a report. The revision petitioners filed objections to the Commissioner's report immediately thereafter. It is the specific contention in the objections that the revision petitioners were never informed about the Commissioner's inspection. It is further stated that the Commissioner did not visit the property or measure the property on the date stated in the Commissioner's report. It is also pointed out that the Commissioner did not file a report as regards the physical features which are required by the parties. It is to be noted that the Advocate Commissioner, after finding that the revision petitioners dispute the very factum of inspection, filed his statement in the form of additional report and requested the Court to treat the same as his response to the affidavit filed by the petitioners in support of his application to scrap the report of the Advocate Commissioner. The trial Court dismissed the application holding that the reasons stated for scraping report are not sustainable and that the petitioners have not given any acceptable reasons in the application.



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5. All the Civil Revision Petitions are connected to I.A. No.1041 of 2017. The revision petitioners have filed C.R.P. No.1466 of 2019 as against the order in I.A. No.1041 of 2017 wherein the revision petitioners prayed for scraping of the report of Advocate Commissioner. C.R.P. No.1468 of 2019 is preferred as against the order in I.A. No.1042 of 2017 for appointment of Advocate Commissioner once again afresh, to note down the physical features of the construction after scraping the report of Advocate Commissioner. It is stated specifically in the affidavit filed in support of the petitioners that the objections raised by the petitioners should be treated as a part of application. Thereafter the revision petitioners have also filed I.A. No.95 of 2018 in I.A. No.1041 of 2017 to examine the Advocate Commissioner and Surveyor. The respondent in the Civil Revision Petition also filed I.A. No.233 of 2019 under Order 12 Rule 8 CPC directing the revision petitioners to produce the Will dated 03.03.2018. All the applications were considered independently. Since all these applications are related to I.A. No.1041 of 2007, this Court is inclined to consider C.R.P. No.1466 of 2019 as a leading case.

6. As pointed out earlier, the lower Court dismissed the application filed by the revision petitioner for scraping the Commissioner's report mainly on the ground that the petitioner to scrap the report is not maintainable and that the



petitioners have not even submitted their objections to the report. The said order appears to be passed without considering the factual background.

7. Learned counsel appearing for the revision petitioners pointed out from the Advocate Commissioner's report that the Commissioner has visited the property without properly intimating the revision petitioners or their counsel. The revision petitioners filed their objections specifically pointing out the irregularities. The revision petitioners have also expressed their concern for appointment of the same Advocate Commissioner for the reason that the Advocate who was appointed as Commissioner to execute the warrant of commission earlier is very close to the counsel appearing for the plaintiffs and that it will not be appropriate to issue the warrant of commission to the same Advocate Commissioner.

8. When serious objections were raised by the revision petitioners to the Commissioner's report, the Advocate Commissioner has submitted an additional report stating that the Advocate Commissioner has filed a report after proper inspection and after getting cooperation and coordination of the Revenue Officials as well as the parties. The Advocate Commissioner has denied the fact that he has inspected the property without proper intimation to



the counsel appearing for the respondent. Even in the additional report it is seen that on the way to the suit property, the Advocate Commissioner visited the office of the Advocate who has been engaged by the defendants in the suit. Since advocate appearing for the revision petitioners was not available at that time, it is further stated that the Commissioner had contacted the junior to learned counsel for the petitioners and informed about the execution of warrant on 28.01.2017.

9. This Court is unable to appreciate the stand taken by the Advocate Commissioner. First of all, the Advocate Commissioner is expected to act neutrally. It is almost admitted that the Advocate Commissioner inspected the property only in the presence of plaintiffs and their counsel without proper notice being issued to either the defendants or to the counsel. When the Advocate Commissioner came to know that there are some objections, has filed an additional report supporting the cause of the respondents in the Civil Revision Petition. Having regard to the admitted fact, this Court is of the view that the apprehensions of the revision petitioner cannot be ignored. Without going into detail, this Court is of the view that the conduct of Advocate Commissioner does not inspire confidence and hence this Court is of the view that in the interest of justice, the first report filed by the Advocate



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Commissioner can be scrapped. However, a fresh Commissioner should be appointed for the same purpose for which the earlier Commissioner was appointed. Accordingly, the report of Advocate Commissioner is scrapped. Similarly the application filed by the revision petitioners for appointment of Advocate Commissioner once again to note down the physical features in I.A. No.1042 of 2017 in O.S. No.88 of 2009, stands allowed. Civil Revision Petitions in C.R.P. No.1066 of 2019 and C.R.P. No.1468 of 2019 are allowed. However, the new Advocate Commissioner will only execute the warrant which was issued to the previous Commissioner.

10. With regard to C.R.P. No.1462 of 2019, in the entire affidavit filed in support of the petition, the plaintiffs did not even mention anything about the relevance of Will. The affidavit filed in support of the petition is bereft of any particulars which are required. Having regard to the admitted position that the affidavit filed in support of the petition in I.A. No.233 of 2018 does not support the case of plaintiff now before this Court. In such circumstances, this Court is of the view that the order in I.A. No.233 of 2018 in O.S. No.83 of 2009 before the District Munsif Court, Gobichettipalayam, is unsustainable and the Civil Revision Petition has to be allowed. Accordingly, C.R.P. No.1462 of 2019 is allowed. It is open to the plaintiffs to file an application afresh giving



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particulars and details of the nature of document and its relevance.

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11. The Interlocutory Applications in I.A. No.95 of 2018 is unnecessary in view of the fact that the other two revision petitions filed by the revision petitioners challenging the order of District Munsif Court, Gobichettipalayam in O.S. No.88 of 2009, are disposed of and fresh directions are given. The petitioners have filed a petition to scrap the report of the Advocate Commissioner. This Court has also scraped the report. Hence, the petitioners cannot now contend that the Commissioner and Surveyor should be examined. Hence, Civil Revision Petition in C.R.P. No.1461 of 2019 is dismissed.

12. Accordingly, all the above Civil Revision Petitions are disposed of with the directions above indicated. No costs. It is made clear that the plaintiffs are given liberty to file a fresh application regarding production of alleged Will and its relevance. When a fresh application is filed, it shall be decided on its own merits.

20.12.2021

Index: Yes / No

Speaking order / Non-speaking order

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S.S.SUNDAR, J .,

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Copy to:

The Principal District Munsif, Gobichettipalayam.

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