

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

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THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CRP(PD).No.921 of 2018  
and C.M.P.No.4980 of 2018

1.S.Jothiramalingam  
2.Pangajavalli

... Petitioners

Versus

1.Venugopal  
2.P.Muralidharan  
3.P.Maheshwaran  
4.Balakrishnan

... Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 06.02.2018 made in I.A.No.474 of 2017 in O.S.No.133 of 2017 on the file of the learned First Additional District Munsif Court (Full Additional Charge of Principal District Munsif Court, Bhavani) by allowing this Civil Revision Petition.

For Petitioners : Ms.Indira  
for Mr.N.Manokaran  
For R1 : Mr.J.Prithivi  
For R2 to R4 : No Appearance

**ORDER**

This Civil Revision Petition has been filed challenging the order dated 06.02.2018 made in I.A.No.474 of 2017 in O.S.No.133 of 2017 on the file of the learned First Additional District Munsif Court (Full Additional Charge of Principal District Munsif Court, Bhavani)

2.I.A.No.474 of 2017 in O.S.No.133 of 2017 was filed for the appointment of Advocate Commissioner to note down the physical features and measure the suit schedule property with the assistance of the Taluk Surveyor.

3.The learned counsel for the petitioners/defendants 1 and 2 submitted that the Court below allowed the application filed by the respondents 1 to 3/plaintiffs for appointment of Advocate Commissioner to note down the physical features and measure the suit schedule property. She further submitted that the trial is yet to be completed in the suit. It is the duty of the respondents 1 to 3/plaintiff to prove the case but, they have filed the application for appointment of Advocate Commissioner to collect the evidence to support their case. These aspects are not considered by the

Court below and hence, the order of the Court below is liable to be set aside.

4. On the other hand, the learned counsel for the first respondent submitted that at the time of filing the suit the plaintiffs have filed all the relevant document including FM sketch. The application has been filed only to note down the physical features and not to find out who are all the encroachers. The appointment of Advocate Commissioner will also help the Court for proper adjudication in the case. Therefore, there is no merits in the present Civil Revision Petition and the same is liable to be dismissed.

5. Heard the learned counsel for the petitioners as well as first respondent and perused the materials available on record.

6. The suit was filed for permanent injunction restraining the defendants from trespassing into or otherwise disturbing the plaintiff's possession and mandatory injunction directing the defendants to remove the encroachment. The Court below after considering the materials has

come to the conclusion that it will be appropriate to appoint an Advocate Commissioner to measure the suit scheduled property and it has not ordered anything to find out the encroachment. The relevant portion of the order made in I.A.No.474 of 2017 is extracted hereunder:

*“On perusal of the petition ground it is found that there are actual dispute exists as to the possession and enjoyment of the petition mentioned property and there exist a dispute as to ownership of specific extent. To prove the actual encroachments this petitioners at present wanted for the appointment of Advocate/Commissioner to measure the suit property with the assistance of Taluk Surveyor. The petitioners affidavit stated reasons are found sufficient for appointment of commissioner. Allowing this application would be beneficial to this court also to decide the actual disputes between the parties. Wherein the respondents averments that they are in the possession of land as per their dale deed dated 22.01,1997 and there are error in measurements mentioned in the revenue records produced before this court to prove errors in the revenue entries. Hence the actual entitlement of the parties can be decided only after full trial that too based on the oral and documentary evidences produced before this court. Hence this court found no significant reasons to deny the prayer of this*

*application.*

*The present facts clearly reveals for effective adjudication of this suit there is necessity for the appointment of commissioner and the demand of the petitioners seems bonafide. There is no ulterior intention or motive on the part of the petitioners proved. Further no prejudice would be caused to either side of an advocate is appointed with direction to properly measure the property with the assistance of Taluk surveyor and identify the physical features of the property. Hence this court found justified to allow this application. In the result this petition allowed. Advocate Mr.S.Kuppusamy J/o Mr.T.Dharmalingam is appointed as court commissioner and he is directed to visit the suit property after giving due notice to both the parties and advocates on record and directed to act strictly in accordance with law. He is directed to note down the existing physical features of the suit property and measure the suit property with the assistance of Taluk Surveyor and directed to file his detailed report with plan on or before 06.03.2018. Remuneration for his work fixed Rs.3,000/- (Three Thousand Only) to be paid directly by the petitioners to the Commissioner/Advocate after the accomplishment of warrant directions.”*

7.On perusal of the above order and hearing the learned counsel for

the petitioners as well as the first respondent, this Court is of the view that there would be no harm for the revision petitioners in appointing the Advocate Commissioner to note down the physical features and measuring the suit schedule property and it will help the Court to resolve the dispute in the proper manner. Therefore, this Court does not find any merits in the submission made by the learned counsel for the petitioners.

8.Further, the petitioners can also file their objections for the Advocate Commissioner's report and entitled to cross examine the Advocate Commissioner if so advised. In case, the petitioners intend to cross examine the Advocate Commissioner, the Court below shall permit the same.

9.With the above observations, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

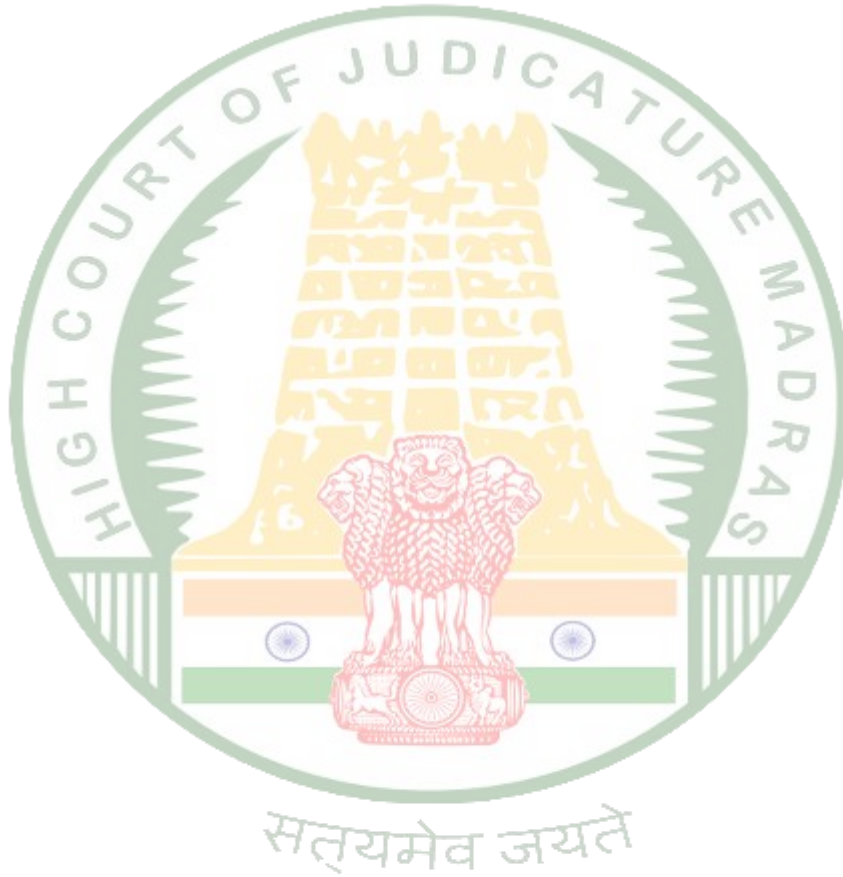
**21.01.2021**

Index: Yes/No  
Speaking Order/Non Speaking Order  
rst

To:

The First Additional District Munsif Court

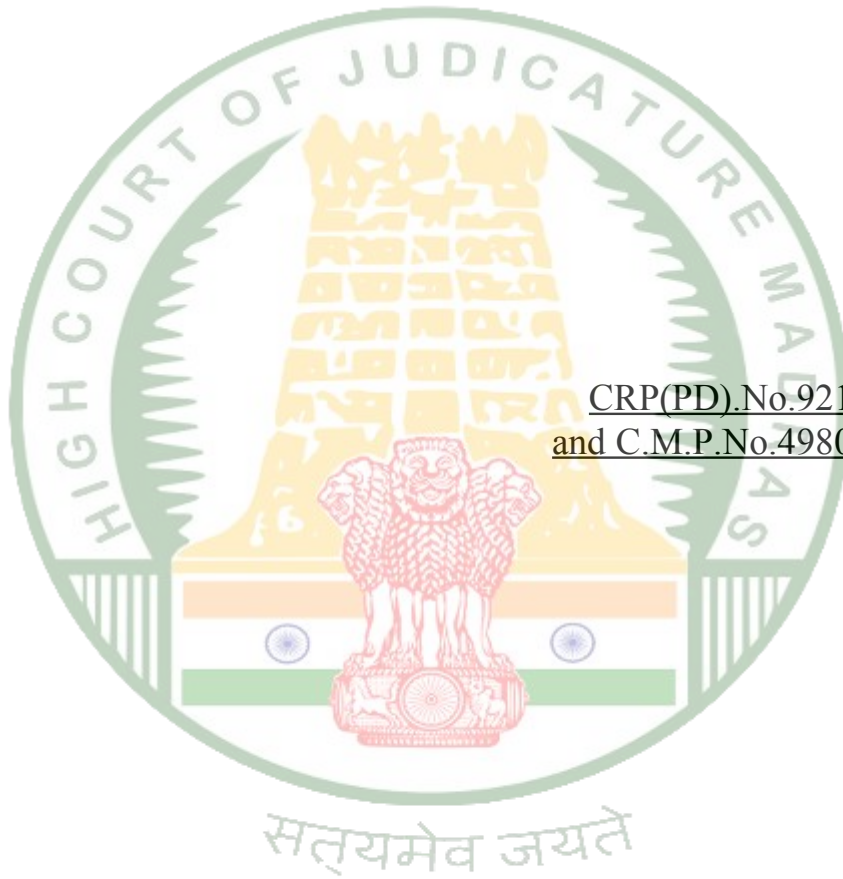
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**KRISHNAN RAMASAMY.J.,**

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