

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2021

CORAM

THE HON'BLE Mr. JUSTICE P.D. AUDIKESAVALU

**C.R.P. (PD) No. 2211 of 2017
and
C.M.P. No. 10536 of 2017**

Nallathambi

... Petitioner

-VS-

1. Kuppusamy

2. Prabhakaran

3. Prab

4. Annamalai

5. Elayaperumal

... Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the Fair and Decretal Order dated 23.03.2017 made in I.A. No. 223 of 2017 in I.A. No. 451 of 2016 in O.S. No. 112 of 2010 on the file of the II Additional District Munsif, Ulundurpet by allowing this Civil Revision Petition.

For Petitioner : Mr. C.Munusamy

For Respondents : No appearance (for R1 to R3)
R4 & R5 - Exparte

ORDER
(through video conference)

The Civil Revision Petition arises out of the order dated 23.03.2017 in I.A. No. 223 of 2017 in I.A. No. 451 of 2016 in O.S. No. 112 of 2010 on the file of the II Additional District Munsif Court, Ulundurpet (hereinafter referred to as the 'Trial Court' for short). The parties are hereinafter referred to as per their description in the suit for the sake of clarity and convenience.

2. Though notice has been served on the Learned Counsel who appeared for the Respondents in the Trial Court, the Respondents have not entered appearance in this Civil Revision Petition.

3. Heard Mr. C.Munusamy, Learned Counsel for the Plaintiff and perused the materials placed on record, apart from the pleadings of the parties.

4. The Plaintiff had instituted the suit in O.S. No. 112 of 2010 in the Trial Court for declaration of title in his favour and for permanent injunction restraining the Defendants from alienating the properties to the third parties and for costs. The Plaintiff had filed an application in I.A. No. 451 of 2016 in that suit to appoint an Advocate Commissioner to take the disputed documents to an

Handwriting Expert for comparison and obtain report. The Trial Court required the Plaintiff to deposit a sum of Rs. 6,000/- towards the remuneration of the Advocate Commissioner and comparison charges. Since the said amount had not been paid within the stipulated time, that application in I.A. No. 451 of 2016 was dismissed by the Trial Court on 12.01.2017. The Plaintiff thereafter filed the application in I.A. No. 222 of 2017 for restoration of I.A. No. 451 of 2016 and another application in I.A. No. 223 of 2017 for extension of time to make payment. The Trial Court dismissed the said applications by recording that before I.A. No. 451 of 2016 was dismissed, sufficient adjournments had been granted on 28.11.2016, 07.12.2016, 09.12.2016, 05.01.2017 and 12.01.2017, but the Plaintiff had failed to comply with the condition and the reasons assigned for non-compliance was not *bonafide*. Aggrieved thereby, the present Civil Revision Petition has been filed.

5. Learned Counsel for the Plaintiff states that the sum of Rs. 6,000/- has been paid to the Advocate Commissioner on 25.03.2021 and acknowledgment has been obtained from him, which has been filed by way of memo dated 25.03.2021 before this Court.

6. Having regard to the fact that the remuneration of the Advocate Commissioner has been paid now, the impugned orders dated 23.03.2017 in I.A. Nos. 222 and 223 of 2017 in I.A. No. 451 of 2016 in O.S. No. 112 of 2010 and the order dated 12.01.2017 in I.A. No. 451 of 2016 in O.S. No. 112 of 2010 are set aside and the direction issued by the Trial Court in I.A. No. 451 of 2016 to the Advocate Commissioner to collect the documents containing disputed signatures from the Trial Court and take the same to handwriting expert for obtaining his opinion shall be carried out. It is informed by the Learned Counsel for the Plaintiff that in view of the pendency of the Civil Revision Petition, no orders have been passed in the suit which has been posted for the next hearing on 28.06.2021. The Advocate Commissioner shall make necessary arrangements to ensure that the report containing the opinion of the handwriting expert is submitted to the Trial Court by 21.06.2021. The parties shall appear through their Learned Counsel before the Trial Court on 28.06.2021. It shall be ensured that there is atleast one effective hearing every week showing progress of the case. The Trial Court shall expeditiously dispose of the case on merits in accordance with law and file a report of compliance in that regard shall be filed before the Registrar (Judicial) of this Court.

7. In the result, the Civil Revision Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

25.03.2021

vjt

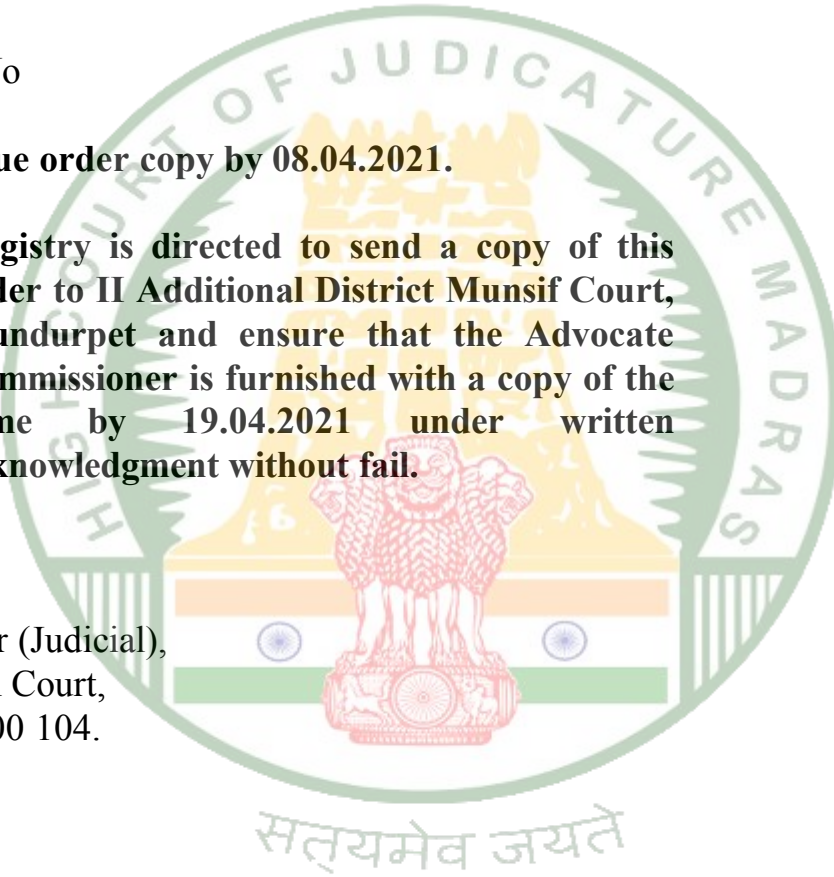
Index: Yes/No

Note: (i) Issue order copy by 08.04.2021.

(ii) Registry is directed to send a copy of this order to II Additional District Munsif Court, Ulundurpet and ensure that the Advocate Commissioner is furnished with a copy of the same by 19.04.2021 under written acknowledgment without fail.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai – 600 104.



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P.D. AUDIKESAVALU, J.

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