

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

CORAM :

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.R.P (PD).No.335 of 2017

and

Cmp.No.1507 of 2017

1.Rathinasamy
2.Kavitha
3.Vimaladevi
4.Lalitha

... Petitioners

Versus

1.Ponnukutty
2.Arjunasamy

... Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 08.11.2016 passed in I.A.No.384 of 2016 in O.S.No.385 of 2015 on the file of the District Munsif Court, Kangayam, Tiruppur District.

For Petitioners : Mr.P.Navaneethakrishnan
For Respondents : Mr.P.Valliappan

ORDER

This Civil Revision Petition has been filed challenging the order dated 08.11.2016 passed in I.A.No.384 of 2016 in O.S.No.385 of 2015 on the file of the District Munsif Court, Kangayam, Tiruppur District.

2.The above said application in I.A.No.384 of 2016 was filed under Order XXIX Rule 9 for re-issuing of the warrant for appointing the same Advocate Commissioner to measure the property correctly, which was left out by the initial Advocate Commissioner in his report.

3.It is the main contention of the petitioners that without providing any sufficient reason, the Court below has re-issued the warrant for appointing the same Advocate Commissioner. Therefore, they filed the present Civil Revision Petition.

4.On the other hand, the learned counsel for the respondents submitted that the Court below, after considering the previous Advocate Commissioner's report in an elaborate manner has come to the conclusion that in the previous Advocate Commissioner's report, the relevant particulars including the proper

description of the property was not made clear. Therefore, the Court below thought it would be appropriate to appoint the same Advocate Commissioner to measure the property with the help of the Taluk Surveyor. Therefore, he contended that there is no infirmity in the order passed by the Court below and interference of this Court also is not required since the order passed by the Court below is a well reasoned judgment. Therefore, this Civil Revision Petition is liable to be dismissed.

5. Upon hearing and on perusal of the records, it appears that initially the Court below has appointed an Advocate Commissioner and he has also filed his report. However, an application was filed in I.A.No.384 of 2016, by stating that the Advocate Commissioner's report does not contain all the details about the description of the measurement of the property. After analysing the pleadings on both sides, the Court below has come to the conclusion that proper measurements of the description of the property are not available in the report. The report of the advocate commissioner is required for the Court below to decide the matter on merits and it would also help the Court below to arrive at the correct conclusion without any confusion while passing the judgment and decree in the main suit. Therefore, the Court below thought it would be appropriate to issue the re-issuance of the warrant for appointing the same Advocate Commissioner and accordingly the above said order has been passed. On perusal of the order, it appears to be reasonable one and the Court below has passed the order only on the basis of justifiable grounds. Therefore, this Court does not find any infirmity in the order dated 08.11.2016 in I.A.No.384 of 2015 passed by the Court below. In fact, the re-issuance of warrant for appointing the same Advocate Commissioner to measure the correct description of the property with the help of the Surveyor would help the Court to pass the final order in a justifiable manner. Therefore, this Court is not inclined to interfere with the order dated 08.11.2016 in I.A.No.384 of 2015 passed by the Court below.

6. However, while passing this order, this Court directs the Advocate Commissioner to file his report within a period of three months from the date of receipt of a copy of this order. The Taluk Surveyor is also directed to provide proper assistance to the Advocate Commissioner appointed by the Court to file a report as directed by the Court. After filing of the report of the Advocate Commissioner, the Court below is directed to grant sufficient opportunity to the revision petitioners to file their objection and cross-examine the Advocate Commissioner, if required. Thereafter, the Court below shall dispose of the suit, within a period of six months from the date of receipt of a copy of this order.

7.In the result, this Civil Revision Petition is dismissed.
No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

klt

To

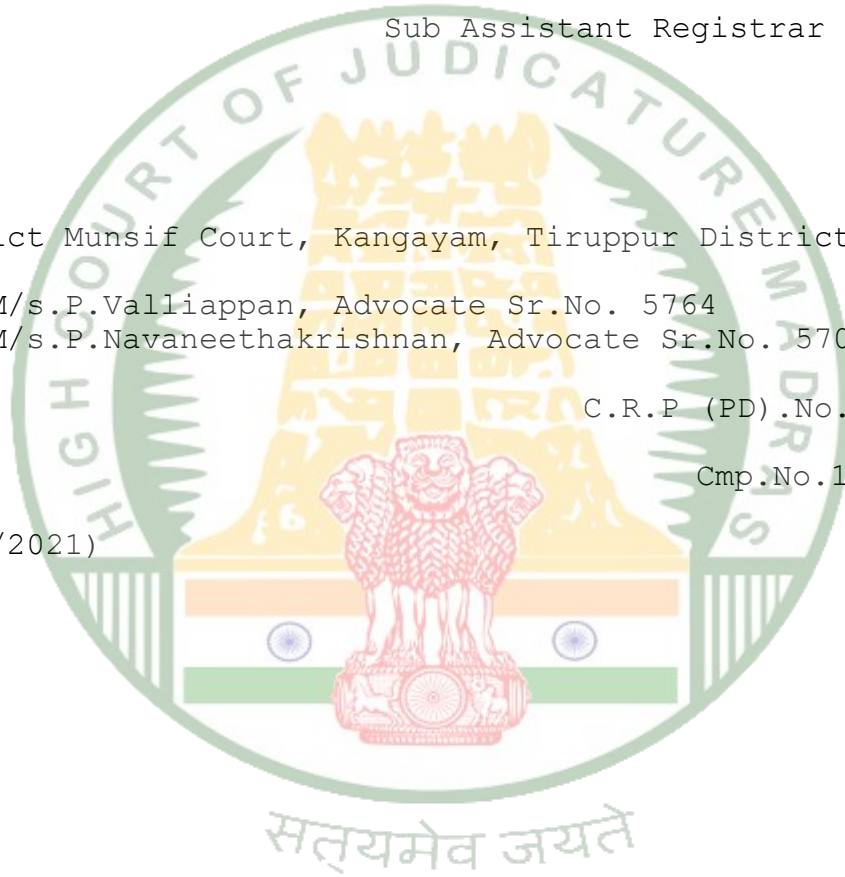
The District Munsif Court, Kangayam, Tiruppur District.

+1 cc to M/s.P.Valliappan, Advocate Sr.No. 5764

+1 cc to M/s.P.Navaneethakrishnan, Advocate Sr.No. 5707

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SSV(CO)
RMP(30/03/2021)



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