

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD) No.906 of 2017
and C.M.P.No.4436 of 2017

M.Gokilam

.... Petitioner

Vs.

1. Rameshkumar
2. Ranjendran

.... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 20.12.2016 made in I.A.No.1129 of 2016 in O.S.No.233 of 2014 on the file of the I Additional District and Sessions Court, Tiruppur.

For Petitioner : Mr.K.S.Karthik Raja

For Respondents

For R1& R2 : No appearance

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ORDER

This revision petition is arising out of the fair and decreetal order dated 20.12.2016 passed by the learned I Additional District and Sessions Judge, Tiruppur in I.A.No.1129 of 2016 in O.S.No.233 of 2014, thereby appointing an Advocate Commissioner on the petition filed by the respondents/defendants.

2. The petitioner is the plaintiff. She filed the above suit for injunction, in which she also filed an application for appointment of Advocate Commissioner in I.A.No.1232 of 2014. The said petition was allowed by the trial Court and the Advocate Commissioner inspected the suit property and filed his reports. The same were also marked as Ex.C.1 and Ex.C.2 without any objection. In fact the respondents did not raise any objection on the report submitted by the Advocate Commissioner. While being so, the respondents/defendants filed another application in I.A.No.1129 of 2016 for appointment of Advocate Commissioner and the same was also mechanically allowed by the trial.

3. The learned counsel appearing for the petitioner would submit that the petitioner filed two suits in O.S.No.233 of 2014 and O.S.No.42 of 2015 as against the respondents herein and in both the suits, Advocate Commissioner was appointed and the reports of the Advocate Commissioner were marked in both the suits. The respondents herein filed an application to appoint an Advocate Commissioner in another suit in I.A.No.1041 of 2016 in O.S.No.42 of 2015 on the file of the I Additional District and Sessions Judge, Tiruppur and the same was allowed. Aggrieved by the same, the petitioner preferred a revision petition in C.R.P.No.905 of 2017 and the same was allowed by this Court on 09.09.2020.

4. While allowing the revision petition in C.R.P.No.905 of 2017, this Court observed that the respondents cannot re-issue warrant without scrapping the earlier Advocate Commissioner's report and therefore, re-issue of warrant to appoint the Advocate Commissioner does not arise. Observing as above, this Court allowed the said revision petition in C.R.P.905 of 2017.

5. In the case on hand also, the respondents filed petition for appointment of Advocate Commissioner without filing any objection to the earlier Advocate Commissioner's report and without sought for scrapping the said report. In view of the above, the order passed by the Court below is perverse and liable to be set aside.

6. Accordingly, this Civil Revision Petition is allowed and the dated 20.12.2016 passed by the learned I Additional District and Sessions Judge, Tiruppur in I.A.No.1129 of 2016 in O.S.No.233 of 2014 is hereby set aside. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

07.01.2021

Internet : Yes

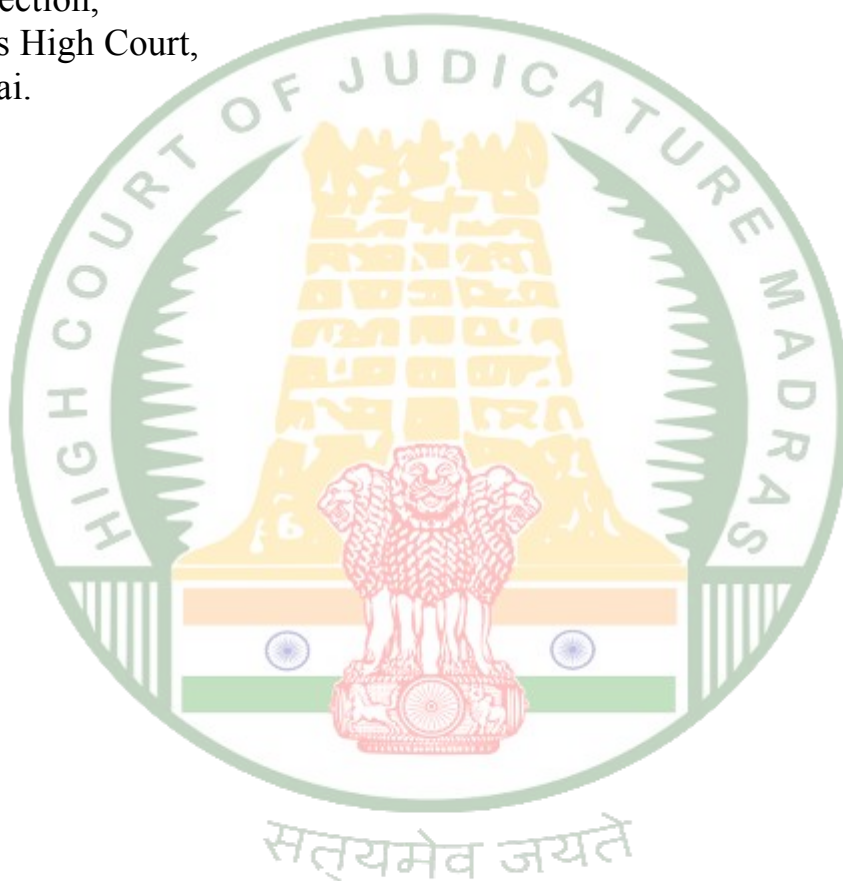
Index : Yes/No

Speaking order/Non-speaking order
rts

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To

1. The I Additional District and Sessions Judge,
Tiruppur.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

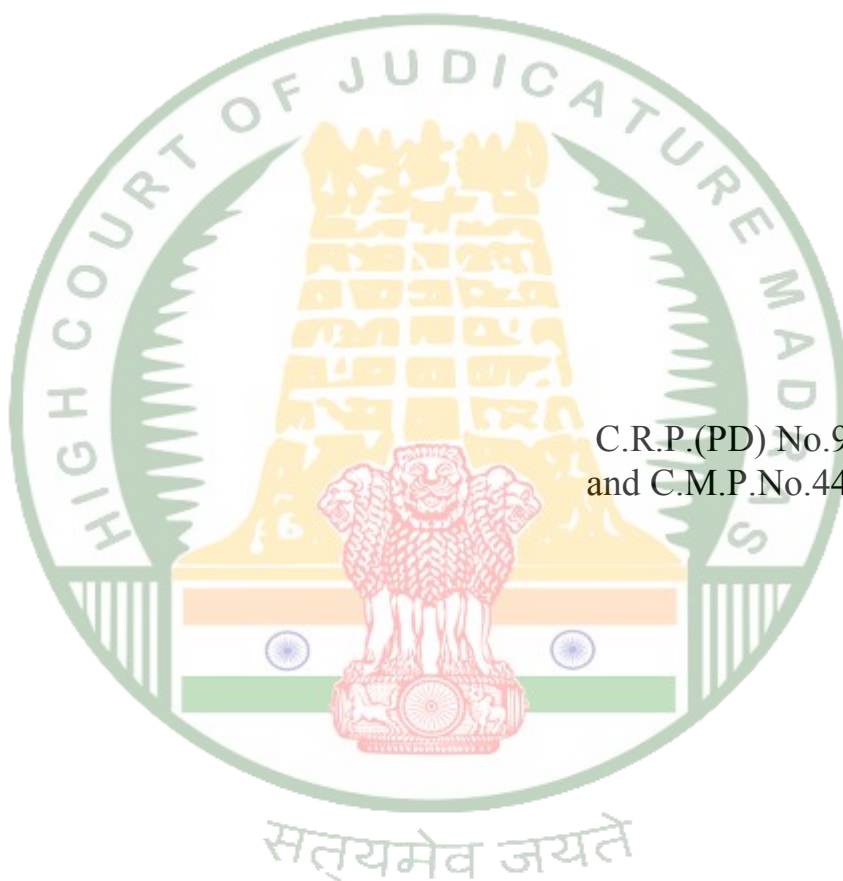


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G.K.ILANTHIRAIYAN, J.

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