

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

CORAM

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CRP(PD).No.3450 of 2018
and C.M.P.No.19342 of 2018

- 1.Murugaiyan
- 2.Chandrasekaran
- 3.Rajaraman
- 4.Adikesavan

... Petitioners

Versus

- 1.G.Perumal
- 2.The Executive Officer,
Arulmigu Soleeswararswamy,
Thirukoil,
Kuthalam,
Myladuthurai Munsif.

- 3.The Executive Officer,
Selection Grade Panchayat Union,
Kuthalam,
Myladuthurai Munsif.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 17.09.2018 made in I.A.No.16 of 2016 in O.S.No.25 of 2015 on the file of the Principal Sub Court, Myladuthurai.

For Petitioners : Mr.Rajaramani R.
For R1 & R2 : No Appearance
For R3 : Mr.V.Durai Solaimalai

ORDER

This Civil Revision Petition has been filed challenging the order dated 17.09.2018 made in I.A.No.16 of 2016 in O.S.No.25 of 2015 on the file of the Principal Sub Court, Myladuthurai.

2.Notice has been served to the 1st respondent and the learned counsel also entered appearance on behalf of the 1st respondent. Thereafter, when the matter was called on 12.02.2021, none appeared on behalf of the 1st respondent. Therefore, the Registry is directed to list the case under the caption "for orders" on 03.03.2021. Accordingly, the matter is listed today. Even today, there is no representation for the 1st respondent. Hence, the matter is taken up for final disposal.

3.The Revision Petitioners are the plaintiff who filed the suit for declaration and recovery of possession. So far, trial has not been

commenced in the suit. In such circumstance, the Revision Petitioners/plaintiffs filed an application for appointment of Advocate Commissioner to measure the suit schedule property with the help of the Surveyor. The said application was dismissed by the Court below by its order dated 17.09.2018.

4.The learned counsel for the Revision Petitioners submitted that the Court below dismissed the application for appointment of Advocate Commissioner stating that already the plaintiffs filed an application for the similar relief which came to be dismissed. Therefore, the Court below refused to entertain the present application stating that the petitioners have filed the application to collect the evidence to substantiate their claim. According to the petitioners, the earlier application was filed for the purpose of classification of the property and that was refused. The present application was filed to appoint an Advocate Commissioner only to measure the suit schedule property and to note down the physical features with the help of the Surveyor. When the suit filed for recovery of property and the 1st respondent has encroached some portion of the property, the Advocate Commissioner's report will bring the encroachment in the

Schedule property to the knowledge of the Court as well as it will help the Court for proper adjudication. This will no way help the petitioners to collect the additional evidence to substantiate their contention. On the other hand, it will facilitate the Court below to pass suitable order. Therefore, he prayed to set aside the order passed by the Court below and remand the matter back to the Court below for reconsideration.

5.The learned counsel for the 3rd respondent appeared and submitted that the 3rd respondent is only a formal party.

6.Upon hearing and on perusal of the documents, it appears that the Revision petitioners herein filed an application previously for the purpose of appointment of Advocate Commissioner for the classification of the suit schedule property and the same was rejected by the Court below. The present application has been filed for appointment of Advocate Commissioner to measure and note down the Physical features with the help of the Surveyor and both the applications are entirely different. The Court below came to the conclusion that the petitioners are not able to produce any document to substantiate their claim. So only for the purpose

of collecting the evidence the present application was filed for the appointment of Advocate Commissioner.

7.This Court is not in a position to agree with the findings given by the Court below for the reason that previous application for appointment of Advocate Commissioner was filed for the purpose of classification of the suit schedule property and the same came to be dismissed. In the present case, the application was filed for the purpose of appointment of Advocate Commissioner to measure and note down the physical features with the help of the surveyor to find out the encroachment. The petitioners have clearly mentioned that the encroached portion is D1 in the B Schedule property. The Commissioner is going to find out who is in possession of the B Schedule as well as the A Schedule Property. This is not going to help Revision Petitioners to establish his title but it is going to help the Court below to adjudicate the suit in a proper manner and pass order.

8.Hence, this Court is of the view that all these aspects are not considered by the Court below and therefore the order of the Court below

needs reconsideration. In view of the above, the order passed by the Court below is set aside and remanded back to the Court below for reconsideration with regard to the appointment of Advocate Commissioner.

9. In view of the above conclusion, the Court below is directed to dispose of the suit within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

03.03.2021

Index: Yes/No
Internet: Yes/No
rst

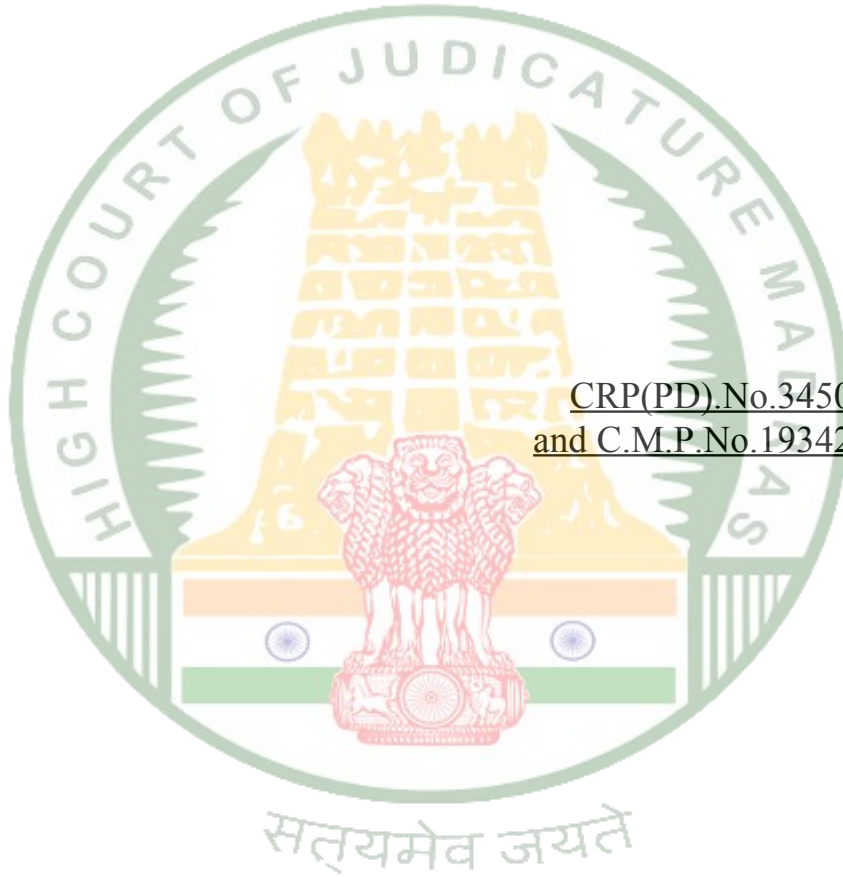
To:

The Principal Sub Court, Myladuthurai.

WEB COPY

KRISHNAN RAMASAMY.J.,

rst



CRP(PD).No.3450 of 2018
and C.M.P.No.19342 of 2018

WEB COPY

03.03.2021