

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

C.R.P (PD).No.3405 of 2018

- 1.Thandavel
- 2.Rajagopalan
- 3.Janaki
- 4.Vasudevan
- 5.Karthikeyan

... Petitioners

[Petitioners 3 to 5 were brought on record as LR's of the deceased first petitioner viz., Thandavel, vide Court order dated 20.11.2020 made in Cmp.Nos. 19109, 19110 & 19112 of 2019]

Versus

- 1.Venkataraman
- 2.V.Parthiban
- 3.V.Saravanan
- 4.V.Kannan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India pleased, to set aside the fair and decretal order dated 21.06.2018 passed in I.A.No.86 of 2018 in I.A.No.814 of 2016 in O.S.No.94 of 2007 on the file of the District Munsif Court, Mettur.

For Petitioner : Mr.Sundara Vadhanan.A

For respondents : Mr.C.Rajasekaran

ORDER

Challenging the order dated 21.06.2018 made in I.A.No.86 of 2018 in I.A.No.814 of 2016 in O.S.No.94 of 2007 passed by the District Munsif Court, Mettur, re-issuing warrant to the Advocate Commissioner, the Civil Revision petition is filed.

2.It is the contention of the revision petitioners that originally the Court below appointed an Advocate Commissioner in I.A.No.814 of 2016, on 28.01.2017. The Advocate Commissioner visited the plaint described land on two occasions on 28.01.2017 and 08.07.2017 to note down the physical features. The Advocate Commissioner, with the assistance of the Taluk Surveyor as well as Village Administrative Officers, measured the suit properties in the presence of counsel for both parties. Thereafter, the Advocate Commissioner filed his report on 16.12.2017 along with a rough sketch. The plaintiffs/respondents herein have also filed their objections to the report of the Advocate Commissioner.

3.Subsequent to the filing of the objections, the plaintiffs/respondents herein filed I.A. No. 86 of 2018 for re-issuing the warrant, on the ground that the Advocate Commissioner did not measure the

<https://www.mhc.tn.gov.in/judges> suit schedule as per Exs.A1, A2, B4 and B8, however, it is main the

contention of the revision petitioners/defendants that re-issuing warrant can be considered only after scrapping the report of the Advocate Commissioner. In this case, the earlier report was not scrapped and the re-issuance of warrant to the Advocate Commissioner is not permissible. Therefore, the revision petitioners prayed to set aside the order passed by the court below.

4.The learned counsel for the respondents/plaintiffs would contend that the Advocate Commissioner has not considered Ex.A1 while submitting his report dated 16.12.2017. Therefore, the respondents/plaintiffs also filed their objections. As per the remand order of the Sub Court, the trial court was directed to appoint an Advocate Commissioner who shall note down the physical features of the property as per Ex.A1, A2, B4 and B8. However, the report of the Advocate Commissioner has been filed contrary to the direction of the Sub Court. Therefore, the trial court rightly re-issued the warrant to the Advocate Commissioner. The Court below has rightly considered the lapse on the part of the Advocate Commissioner and re-issued the warrant to the Advocate Commissioner to again measure the physical features of the property by taking into consideration the measurements contained in Ex.A1. Therefore, he submitted that there is no

illegality in the order passed by the Court below.

5.Upon hearing both sides, it appears that initially, the Advocate Commissioner was appointed by the trial court, who has filed his report on 16.12.2017 after measuring the properties described in the plaint and noted down the physical features. For the report of the Advocate Commissioner, the respondents/plaintiffs have filed their objections.

6.The learned counsel appearing for the respondents/plaintiffs submitted that there are defects in the report of the Advocate Commissioner, therefore, the application for re-issuance of warrant to the same Advocate Commissioner was taken out by the respondents. The defects in the report of the Advocate Commissioner can be rectified only by re-issuing the warrant. The Court below, after considering the objections raised by the respondents/plaintiffs, allowed the application, consequently re-issued the Advocate Commissioner's warrant.

7.When objections are filed by the parties to the report of the Advocate Commissioner, it is duty of the Court below, to adjudicate the issues raised in the objections and in the process of adjudication, it is for the

Court below to allow both parties to examine the Advocate Commissioner with respect to their objections to the report of the Advocate Commissioner. This exercise has not been done by the Court below. After completing the said process, the Court below has to pass the final order as to whether the report of the Advocate Commissioner is sustainable or it is to be scrapped. In this case, the Court below has not come to the conclusion as to whether the Advocate Commissioner's report has to be scrapped and whether warrant needs to be re-issued to him once again. In the absence of any such findings, the Court below has passed the impugned order. In such view of the matter, the order passed by the Court below is not sustainable and the same is liable to be set aside. Accordingly, the order of the Court below is set aside.

8. However, while setting aside the order, this Court permits both parties to cross-examine the Advocate Commissioner, if so desires, and after the cross-examination, the Court below shall pass a final order as to whether the Advocate Commissioner report is sustainable or it has to be scrapped. Thereafter, the Court below shall decide as to whether the warrant needs to be re-issued once again.

9.Accordingly, the order dated 21.06.2018 passed in I.A. No.86 of 2018 in I.A. No. 814 of 2016 in O.S. No. 94 of 2007 on the file of the District Munsif Court, Mettur is set aside. The Civil Revision Petition is allowed. No costs.

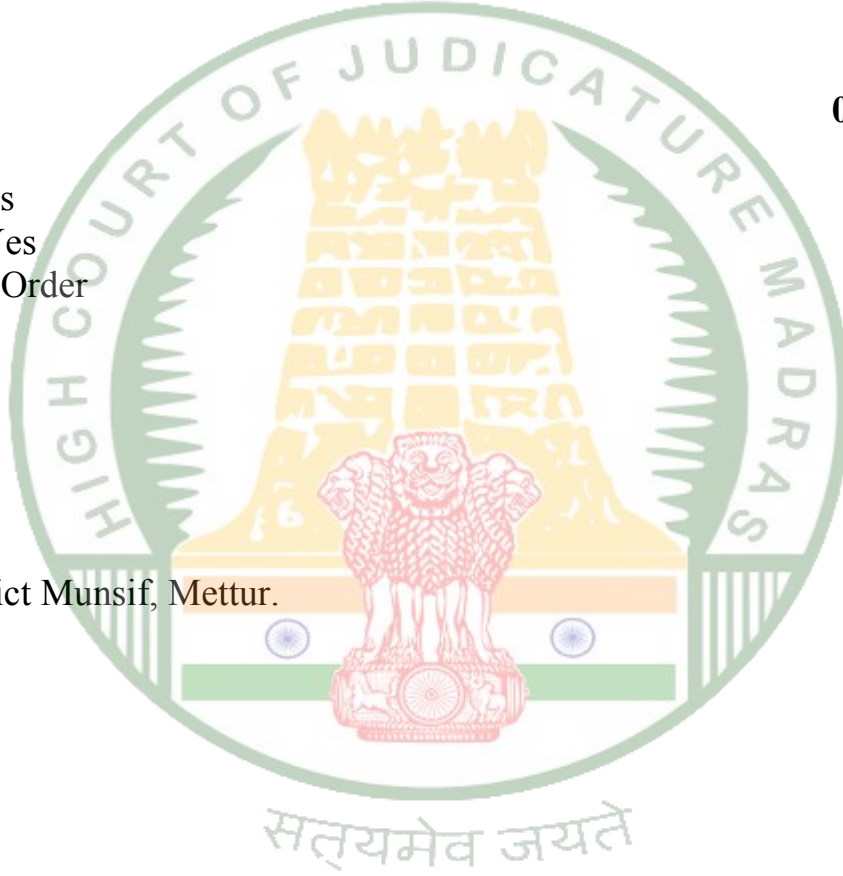
03.03.2021

Index: Yes
Internet: Yes
Speaking Order

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To

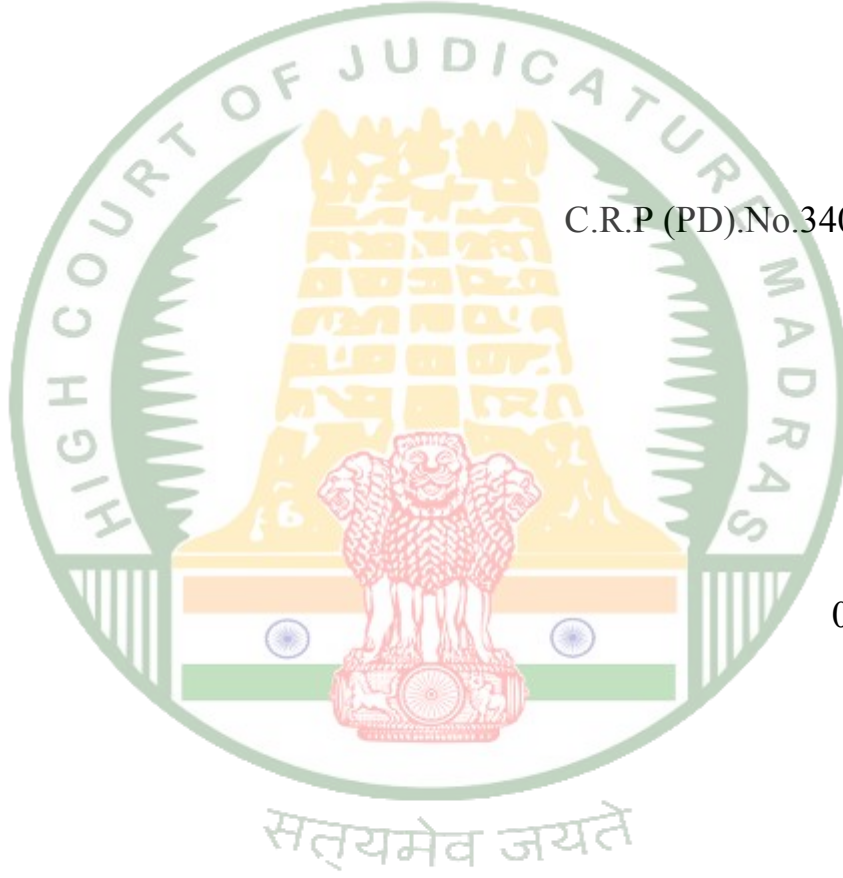
The District Munsif, Mettur.



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KRISHNAN RAMASAMY, J.

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