

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(PD)Nos.3769 and 3770 of 2018
and CMP No.21030 of 2018

Kavitha Petitioner in both the revisions

Vs

Padmavathy ... Respondent in both the revisions

Civil Revision Petition filed under Article 227 of the Constitution of India, prayed to set aside the fair and decreetal order dated 29.06.2018 passed in I.A.Nos.398 and 399 of 2017 in O.S.No.178 of 2012 on the file of the Additional District Munsif, Thiruvannamalai and allow the same.

For Petitioner : Mr.C.Venkatesan

For Respondent : Mr.K.Venkatasubban
for M/sSarvabhauman Associates

COMMON ORDER

These Civil Revision Petitions have been filed against the order made in I.A.Nos.398 and 399 of 2017 in O.S.No.178 of 2012 on the file of Additional District Munsif, Thiruvannamalai.

2. I.A.No.398 of 2017 was filed to reopen the suit in O.S.No.178 of 2012 and I.A.No.399 of 2017 was filed seeking a direction to the Advocate Commissioner to revisit the suit schedule property as per Ex.A.2 and Ex.B.3 along with the help of surveyor and file a fresh report along with sketch.

3. According to the petitioner, Advocate Commissioner was appointed in I.A.No.364 of 2014 and he has filed a report. The sale deed filed before the court below vide Exs.A.2 and B.3 were not considered by the Advocate Commissioner and therefore, he has filed an application in I.A.No.399 of 2017 to revisit the suit schedule property. The same was dismissed by the court below stating that already the Advocate Commissioner was appointed who visited the suit schedule property and filed the report. The learned counsel for the revision petitioner submits that today morning, he enquired the counsel in counter part who was appearing in the lower court that the petitioner has filed an objection to the Commissioner's Report and therefore, he submits that in case, this Court is inclined to dismiss the civil revision petition, the revision petitioner may be permitted to cross examine the Advocate Commissioner.

4.Learned counsel appearing for the respondent fairly submits that originally Advocate Commissioner was appointed and filed his report and therefore, there is no need for the Advocate Commissioner to revisit the suit schedule property and if at all there are any additional facts, the petitioner can file an objection and he may be permitted to cross examine the Advocate Commissioner and without doing so, filing a revision petition under Article 227 of the Constitution of India is not proper and therefore, the civil revision petition is liable to be dismissed.

5.Heard learned counsel for the petitioner and the respondent and perused the materials available on record.

6.It is an admitted fact that the court below has appointed Advocate Commissioner in I.A.No.364 of 2014 and the Advocate Commissioner has also filed his Report before the court below. Pending Civil Revision Petition, the petitioner has also filed an objection to the Advocate Commissioner's Report. In such view of the matter, having the court below appointed the Advocate Commissioner and the Advocate Commissioner filed his Report, there is no

need to consider the application filed by the petitioner as the petitioner has already filed an objection and in such case, the petitioner is entitled to cross examine the Advocate Commissioner and that is the course to be adopted in the present case and without doing so, filing fresh application to direct the Advocate Commissioner to revisit the suit schedule property under the pretext of Exs.A.2 and B.3 is not just and proper.

7. Accordingly, there is no merit in the the civil revision petitions and the same are liable to be dismissed and accordingly, they are dismissed.

8. While dismissing the civil revision petitions, this Court permits the revision petitioner to file an objection to the Advocate Commissioner's report if not filed already, and to cross examine him, if she is so advised. No costs. Consequently, connected civil miscellaneous petition is closed.

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Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

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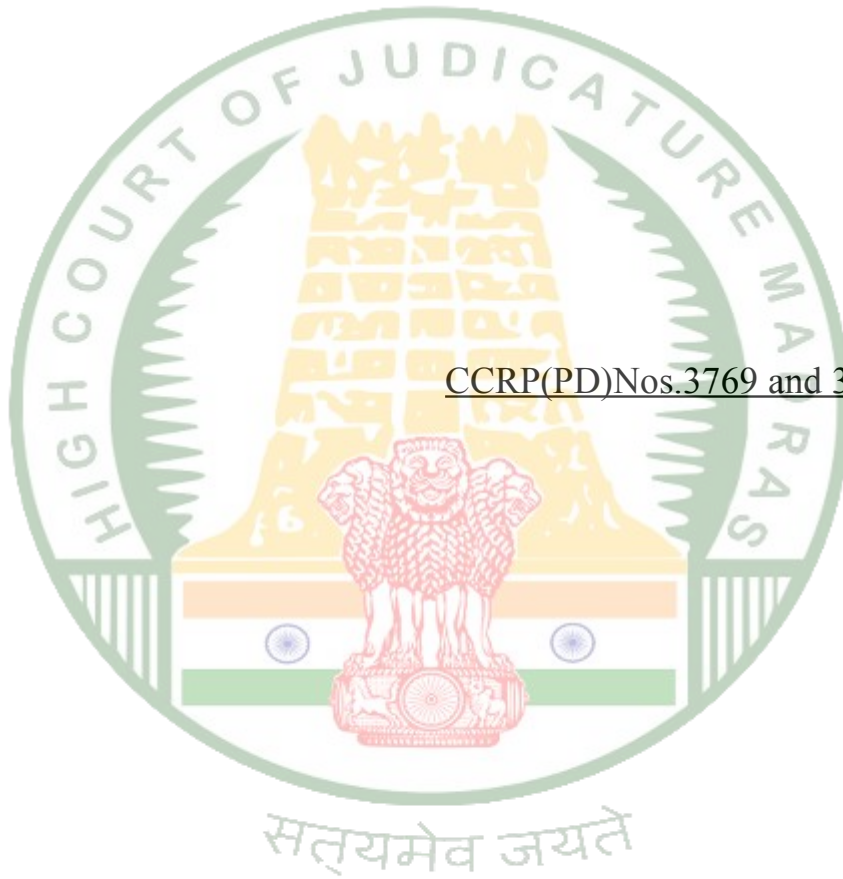
Additional District Munsif, Thiruvannamalai



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KRISHNAN RAMASAMY,J.

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