

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2021

CORAM

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

**C.R.P.(PD) No.4049 of 2018
and CMP No. 22366 of 2018**

1. Madhammal
2. Perumal
3. Muthu
4. Sakthivel

.... Petitioners

Vs

1. Sakkaraivelu
2. Maadhu
3. Kondalan (alias) Muniyappan
4. Krishnan
5. Sennakrishnan
6. Devaraj
7. Krishnan
8. Pazhanisamy

9. The Block Development Officer,
Pennagaram Town,
Dharmapuri District.

10. The Tahsildar,
Pennagaram,
Dharmapuri District.

11. The District Collector,
Dharmapuri District.

....

Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 01.10.2018 made in I.A.No.379 of 2018 in O.S.No.25 of 2013 on the file of the District Munsif, Pennagaram.

For Petitioners : Mr.M.Santhana Raman
For R1 to R8 : No appearance
For R9 to R11 : Mr.Edwin Prabakar
Government Advocate (CS)

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 01.10.2018 made in I.A.No.379 of 2018 in O.S.No.25 of 2013 on the file of the District Munsif, Pennagaram, thereby allowing the petition seeking appointment of Advocate Commissioner.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed a suit in O.S.No.25 of 2013 for declaration and injunction in respect of the suit property. While pending suit, the respondent filed a petition in I.A.No.379 of 2018 in O.S.No.25 of 2013 for seeking appointment of Advocate Commissioner to inspect the suit property and to note down the physical features of the suit property and the same was allowed. Aggrieved by the same, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioners would submit that the petitioners are the plaintiffs. They filed a suit for declaration and injunction in respect of the suit property. When the suit was posted for defendants side evidence, only to collect the evidence, the respondents filed a petition for appointment of Advocate Commissioner in the suit filed by the petitioners for declaration and injunction. In the suit filed by the petitioners, they are bound to prove their case for their evidence. The defendants cannot file a petition seeking for appointment of Advocate Commissioner to disprove the case of the plaintiffs.

4. That apart, even in the petition, he categorically stated that in the cross-examination of P.W.1, during plaintiffs side evidence they denied the fact that the Mariamman Temple, Well and Cart Track were not situated in Survey No.430 and re-survey No.424. Therefore, disprove the same, the respondent filed a petition seeking appointment of Advocate Commissioner.

5. Heard, the learned counsel for the petitioners. Though, the notice served to all the respondents and their name are printed in the cause list, no one appeared before this Court in person or through pleader.

6. Admittedly, the petitioners filed a suit for declaration and injunction in respect of the suit property. After examination of P.W.1, when the suit was posted for defendants' side evidence, the respondent filed a petition seeking appointment of Advocate Commissioner to note down the physical features of the suit property and note down the Mariamman Temple, Well and other residential area and to file a report. Even according to the respondents, they wanted to verify whether the Mariamman Temple, Well and Cart Track were situated or not in Survey No.430 and re-survey No.424. It is nothing but collection of evidence. It cannot be permitted under the law. This petition has been filed, that too, when the suit was posted for defendants side evidence. In a suit for declaration and injunction of this nature, the respondents need not seek for appointment of Advocate Commissioner to disprove the case of the petitioners. The petitioners are bound to prove their case based on their pleadings, for which the respondents are not entitled to make out any application for appointment of Advocate Commissioner.

7. That apart, if there is any failure or lapse on the part of the petitioners, either in making the correct description of the property or for convincing the Court with material evidence in support of their claim,

they would have to suffer for such failure. Therefore, the Court below ought not to have appointed the Advocate Commissioner.

8. In view of the above, the order passed by the Trial Court is perverse and illegal and as such it is liable to be set aside. Accordingly, the order dated 01.10.2018 made in I.A.No.379 of 2018 in O.S.No.25 of 2013 on the file of the District Munsif, Pennagaram, is hereby set aside and the Civil Revision Petition is allowed. However, the Trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

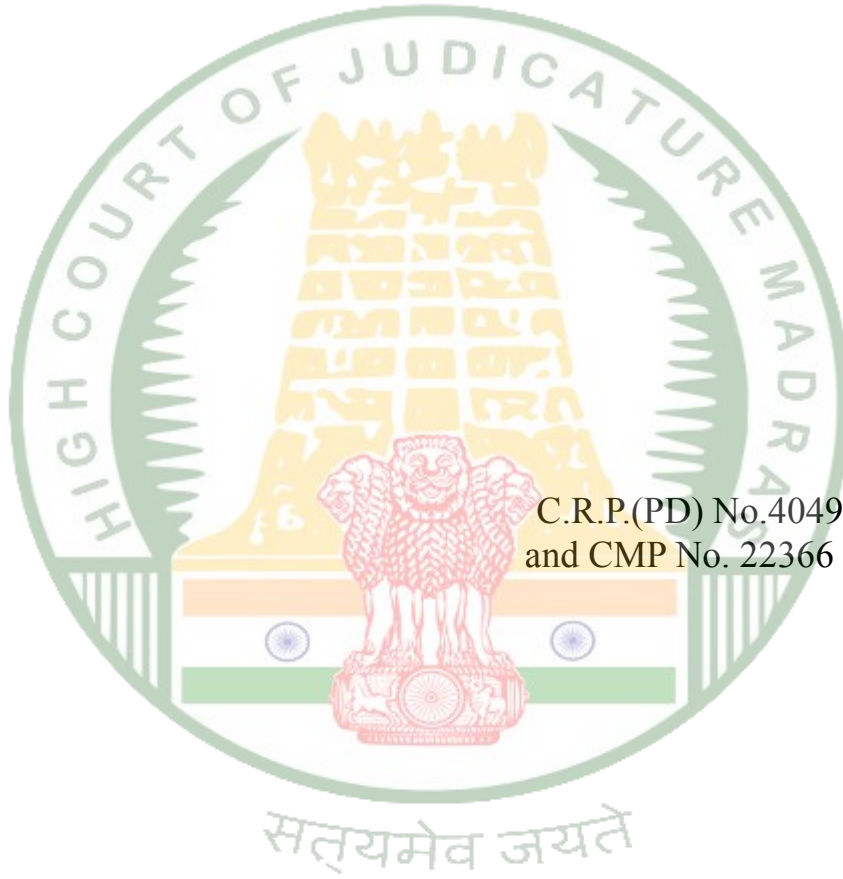
To
The District Munsif,
Pennagaram.

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