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CMP NO. 20731 of 2025
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-08-2025

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

C.M.P.No.20731 of 2025

in

S.A.No.859 of 2016

Kamalakannan
S/o. Late S. Duraisamy, No.22, Sundaram Main St,
Vyasarpadi, Chennai - 39

Appellant(s)

Vs

K. Prem Sekar
S/o Late Kuppusamy, No. 25-A, Sundaram Main
St, Vyasarpadi, Chennai -39 S. Duraisamy
(Deceased) and 6 Others

Respondent(s)

For Appellant(s):

Mr.K.Rajasekaran

For Respondent(s):

Mr.C.Umashankar (For R1)

Mr.C.Vigneswaran (Advocate Commissioner)

ORDER

The present Civil Miscellaneous Petition has been filed to recall the order dated 03.07.2025 in S.A.No.859 of 2016 as the same was obtained by the appellant by suppressing the material fact of the dismissal of the similar applications, for appointment of Advocate Commissioner by this Hon'ble Court on 15.12.2015 itself.

2. The instant petition had been filed by the petitioner, who is the



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second respondent in this appeal, to recall the order of this Court dated 03.07.2025, wherein this Court had appointed an Advocate Commissioner. It is his contention that a similar petition was filed pending the first appeal, and the same was dismissed. As against the said order, a Civil Revision Petition in C.R.P.Nos.4459 and 4460 of 2014 was filed, and the same was dismissed by order dated 15.12.2015, wherein this Court had held that it is for the parties to lead evidence and that an Advocate Commissioner could not be appointed for gathering evidence. Therefore, he seeks this Court to recall the order dated 03.07.2025.

3. It may be true that this Court, in a Revision filed against the order, rejecting the appointment of an Advocate Commissioner, had upheld the rejection, refusing to appoint an Advocate Commissioner. The said order was passed by this Court in Civil Revision Petitions in C.R.P.Nos.4459 and 4460 of 2014 on 15.12.2015.

4. In the instant second appeal, by order dated 11.01.2017, this Court, after hearing the learned counsel appearing for the respective parties, was of the opinion that it would be necessary to appoint an Advocate Commissioner to measure the suit property on the basis of Ex.A2 and Ex.A7, and in that



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aspect, this Court had directed the First Appellate Court to appoint an Advocate Commissioner to inspect the suit property in the light of the observations made in the order.

5. It is brought on record that an Advocate Commissioner was appointed by the Lower Appellate Court as directed by this Court in its order dated 11.01.2017. However, before the execution of the warrant, as the sole respondent had died, the warrant was not executed. Thereafter, by orders of this Court dated 01.04.2022, the legal heirs of the deceased respondent were brought on record. Having found that pursuant to the order dated 11.01.2017, the Advocate Commissioner appointed by the Lower Appellate Court had not executed the warrant, this Court appointed a learned Advocate of this Court as Advocate Commissioner in compliance with the order dated 11.01.2017.

6. The present miscellaneous petition has been filed only to recall the order dated 03.07.2025, which was an order made in furtherance of the order dated 11.01.2017.



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7. Therefore, this Court is of the view that the present application is without merits, and accordingly, the miscellaneous petition in C.M.P.No.20731 of 2025 in S.A.No.859 of 2016 stands dismissed. However, there shall be no order as to costs.

22-08-2025
(1/2)

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To

1. K. Prem Sekar

S/o Late Kuppusamy, No. 25-A, Sundaram Main St,
Vyasarpadi, Chennai -39

S. Duraisamy (Deceased)

2. Baskar

S/o. Late Duraiswamy, Res. at No.22 Sundaram Main Street, Vyasarpadi,
Chennai -39

3. Prabavathi

D/o. Late S. Duraisamy, Res. at No.22 Sundaram Main Street, Vyasarpadi,
Chennai -39

4. Vijaya

D/o. Late S. Duraisamy, Res. at No.22 Sundaram Main Street, Vyasarpadi,
Chennai -39

5. Prema

D/o. Late S. Duraisamy, Res. at No.22 Sundaram Main Street, Vyasarpadi,
Chennai -39

6. Lalli

D/o. Late S. Duraisamy, Res. at No.22 Sundaram Main Street, Vyasarpadi,
Chennai -39

7. Pappi

D/o. Late S. Duraiswamy, Res. at No.22 Sundaram Main Street, Vyasarpadi,
Chennai -39



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K.KUMARESH BABU, J.

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