

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(PD)No.714 of 2012
and
M.P.No.1 of 2012

1.Mohammed Yunus

2.Kudpudeen
represented by his Power Agent
Mohammed Yunus

.. Petitioners

Vs

Bhajeela Begum
Represented by her Power Agent
Abdul Hadi

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal orders passed in I.A.No.1060 of 2011 in O.S.No.88 of 2005, dated 07.12.2011, on the file of the Court of District Munsif, Sirkali.

For Petitioners : Mrs.Srividya
for M/s.A.Muthukumar

For Respondent : Mr.S.Sounthar

ORDER

The petitioners have filed this Civil Revision Petition to set aside the fair and decreetal order passed in I.A.No.1060 of 2011 in O.S.No.88 of 2005 on the file of District Munsif Court, Sirkali dated 07.12.2011.

2.The case of the revision petitioners is that they are the defendants in the above suit in O.S.No.88 of 2005. The said suit is for recovery of possession of the suit scheduled property filed by the respondent herein against the revision petitioners. The description of the Suit Property was the Survey sketch mentioned property submitted by a Commissioner in O.S.No.11 of 2003, which is one another suit pending between the revision petitioners and the respondent. According to the respondent/plaintiff the suit property which is his absolute property remain encroached by the revision petitioner, whereas the revision petitioner herein filed Counter claim, claiming adverse possession over the suit property.

3.According to the revision petitioners the suit property even from the year 1951 is under the peaceful possession of the revision

petitioners' family. The revision petitioners' family has also constructed a house therein in the year 1969. The continuous and long possession of the revision petitioners for more than half a century would reveal the fact that the plaintiff is not entitled for any relief sought for in his suit. Being so, the revision petitioners filed an Interlocutory application in I.A.No.1060 of 2011 under Order 26 Rule 9 of CPC to appoint an Engineer of the Public Works Department as a Commissioner to visit the suit scheduled property and scientifically ascertain the age of the revision petitioners' house, so as to arrive at a correct decision. However, the Learned trial Judge without proper appreciation of Law and fact has dismissed the revision petitioners' application by holding that already an advocate commissioner to note down the physical feature of suit property was appointed and a corresponding report of the Commissioner was submitted before the trial Court in the year 2005 and hence the present application is unwarranted. The said dismissal order of appointment of an Engineer is under challenge in this civil revision petition.

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4.I heard Mrs.Srividya, learned counsel appearing for the revision petitioners and Mr.S.Southar, learned counsel appearing for the respondent and perused the entire records.

5.The learned counsel for the revision petitioner would submit that the appointment of an Engineer from the public works department is just necessary and indispensable to ascertain the age of the building, since it is the case of the respondent/ plaintiff that the subject building stood constructed in the year 2000, whereas according to the revision petitioner the building in question was constructed long back before the year 2000. An engineer, who is a competent person to ascertain the age of the building, is to be appointed and filing of a report by him would reveal the correct age of the building and enable the Court for proper appreciation of the facts involved in the case.

6.The learned trial judge ought not to have adopted a straight jacket formula that the earlier appointment of Advocate Commissioner disentitled the revision petitioners from praying for an appointment of an Engineer from Public Works Department, as a Commissioner to ascertain the age of the building.

7.Per contra the learned counsel for the respondent would submit that the application sought by the revision petitioners is unsustainable for the sole reason that the suit scheduled property itself

is a subject property forming a surveyor report filed in one another suit, which is precise, besides sufficient for the trial Court to proceed with the suit on hand. Moreover the application was also filed belatedly without valid reasons assigned thereof. Only on proper appreciation of the fact that the earlier petition for appointment of a surveyor was already dismissed, the interlocutory application on hand in I.A.No.1060 of 2011 was rightly dismissed by the learned trial judge.

8.Upon hearing the rival submissions and on perusal of records, it is noticed by this Court that apart from the suit on hand in O.S.No.88 of 2005, there are two other suits in O.S.No.11 of 2003 and O.S.No.12 of 2003 pending between the revision petitioners and the respondent. The survey sketch submitted in the earlier suits in O.S.Nos.11 and 12 of 2003 forms the subject property of the latter suit in O.S.No.88 of 2005 filed by the respondent.

9.Therefore, it is obvious for this Court to find that the suit properties of all the three suits remain the same for a greater extent.

10.At this juncture, it would be noteworthy that according to the revision petitioners, the building in the suit property was constructed

long back and the same is not constructed in the year 2000 as alleged by the respondent/ plaintiff. Though very many contentions were raised by either side, this Court in view of the fact that there are already 3 suits pending between the parties herein, besides the counter reliefs sought in the above suits, to give quietus and thereby to enable the trial Court to adjudicate the suits rightly, this Courts in the interest of justice feels deem fit to allow the revision petitioners' application for appointment of an Engineer Commissioner.

11.It is needless to say that such report filed by the competent person would always serve the Court for proper adjudication of the lis before it.

12.In the result:

(a) this Civil Revision Petition is allowed by setting aside the order passed in I.A.No.1060 of 2011 in O.S.No.88 of 2005, dated 07.12.2011, on the file of the Court of District Munsif, Sirkali;

(b) the trial Court is directed to appoint an Engineer of Public Works Department for the purpose above mentioned within a period of one month from the date of

receipt of a copy of this order and the Engineer so appointed shall file his report before the trial Court within a period of one month thereafter;

(c) on receipt of the report of the Engineer, the learned trial judge is directed to dispose of the suit within a period of four months thereafter. No costs. Consequently, connected miscellaneous petition is closed.

14.07.2016

Note: Issue order copy on 14.09.2017

vs

Index: Yes

Internet: Yes

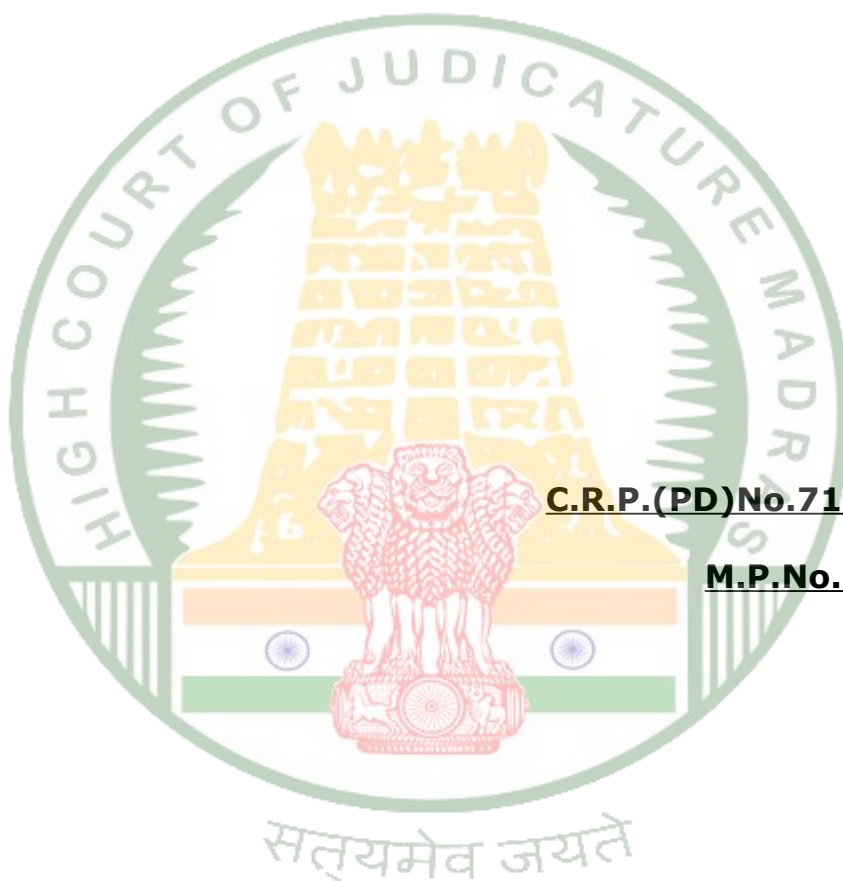
To

The District Munsif Court,
Sirkali.

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M.V.MURALIDARAN.J.,

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