

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (PD) No.1352 of 2017 &
C.M.P.No.6271 of 2017

Chinnathambi

... Petitioner/Plaintiff

Vs.

Dhanavel

... Respondent/Defendant

Prayer: Revision filed under Section 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.1172 of 2016 in O.S.No.106 of 2012 dated 21.11.2016 on the file of the District Munsif Court at Ulundurpet.

For Petitioner : Mr.S.Ragupathi

ORDER

The Civil Revision Petition has been filed against the fair and decreetal order passed in I.A.No.1172 of 2016 in O.S.No.106 of 2012 dated 21.11.2016 on the file of the District Munsif Court at Ulundurpet.

2.The petitioner is the plaintiff and the respondent is the defendant in O.S.No.106 of 2012. The petitioner/plaintiff filed a suit for permanent injunction restraining the respondent not to interfere with his peaceful possession and enjoyment of the suit property. The respondent/defendant has filed the written statement on 17.07.2013 and is contesting the suit.

3. The trial commenced and that PW1 and PW2 were examined in chief and cross examined by the respondent and the suit was posted for orders. At this stage, the petitioner has filed the interlocutory application in I.A.No.1172 of 2016 under Order XXVI Rule 9 read with Section 151 of Code of Civil Procedure, for appointment of an Advocate-Commissioner to inspect the suit properties, note down the physical features, measure the property with the help of the qualified Surveyor and to file his report and sketch.

4. According the petitioner, he purchased the 'A' schedule property by way of sale deed on 30.06.1983 from one Paulraj vide document No.887/1983 which was described in the plaint. In the

said sale deed, the northern boundary was wrongly mentioned as 'Road'. In fact, it is only a poromboke land. The petitioner is using the said poromboke land which is described as 'B' Schedule property, as a pathway to reach his property i.e. 'A' Schedule property. The respondent/defendant is trying to trespass the 'B' Schedule property. Hence, the present suit.

5. The respondent has filed counter affidavit denying the averments made in the application made by the petitioner. In his counter has stated that after the evidence of PW2, the suit is posted for further evidence. Since the petitioner's side witnesses were examined, the petition is not maintainable. Hence, he prays for dismissal of the application filed by the petitioner.

6. The trial Court after considering the averments mentioned in the affidavit, counter affidavit, arguments advanced by the learned counsel for the parties submissions made on either side and the materials available on record, dismissed the application holding that the Advocate Commissioner cannot be appointed to find out who is in possession of the suit properties. Against the same, the present Civil Revision Petition is filed by the petitioner.

7. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

8. The petitioner filed the suit for permanent injunction on the ground that he has purchased 'A' schedule property and he is using the 'B' schedule property as pathway to reach his property. If it is so, it is for the petitioner to substantiate this contention by letting in acceptable evidence. It is well settled that an Advocate Commissioner cannot be appointed to collect evidence and in a suit for injunction, the Advocate Commissioner need not be appointed. The petitioner has not given any reason for appointment of Advocate Commissioner.

9. The learned trial Judge after considering all the materials available on record and judgments relied upon by the learned counsel for the respondent properly, dismissed the application by giving valid and cogent reasons. Therefore, there is no illegality or irregularity warranting interference by this Court with the order dated 21.11.2016 passed by the Principal District Munsif Court, Ulundurpet.

10.In the result, this Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

kal

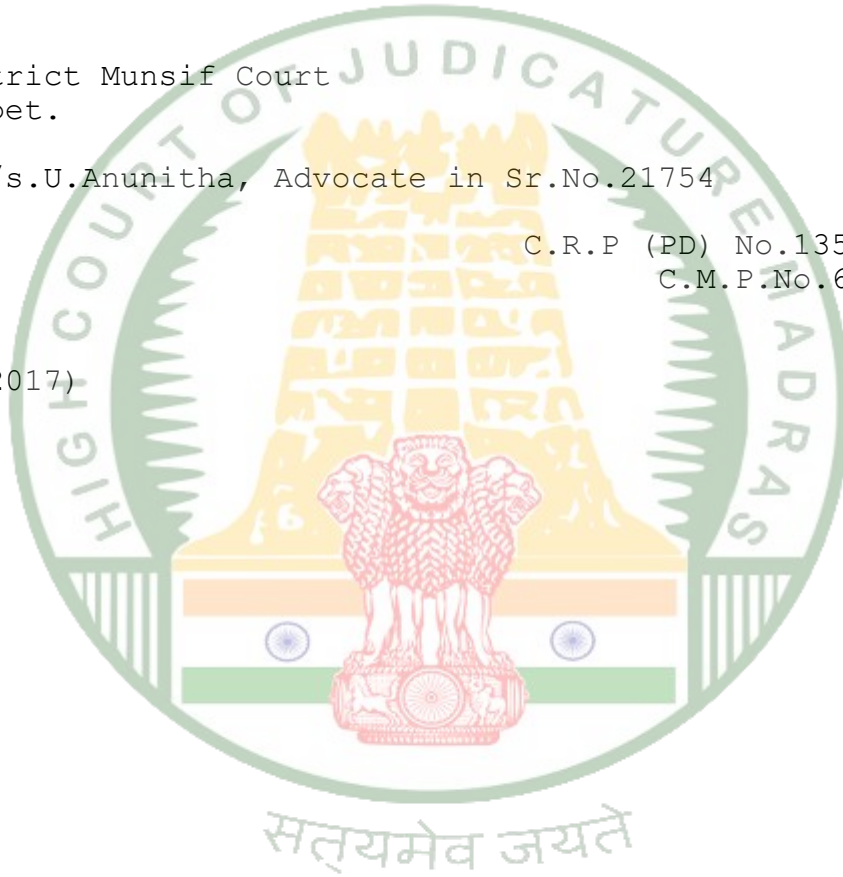
To

The District Munsif Court
Ulundurpet.

+1cc to M/s.U.Anunitha, Advocate in Sr.No.21754

C.R.P (PD) No.1352 of 2017 &
C.M.P.No.6271 of 2017

NM(CO)
NR(13/06/2017)



WEB COPY