

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.1899, 1900 of 2017
& C.M.P.Nos.9192 and 9193 of 2017

Kumaravel

.. Petitioner in
both CRPs.

Vs.

S.Punithavalli

.. Respondent in
both CRPs.

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 23.03.2017 made in I.A.Nos.180 and 181 of 2016 in O.S.No.152 of 2012 on the file of the learned Principal Subordinate Judge, Krishnagiri.

For Petitioner : Mr.A.Prabhakaran

COMMON ORDER

The Civil Revision Petitions have been filed against the fair and decreetal order dated 23.03.2017 made in I.A.Nos.180 and 181 of 2016 in O.S.No.152 of 2012 on the file of the learned Principal

Subordinate Judge, Krishnagiri.

2. In both the civil revision petitions, the issues involved are one and the same and hence, they are disposed of by this common order.

3. The petitioner is defendant and respondent is plaintiff in O.S.No.152 of 2012. The respondent filed suit for declaration, recovery of possession, permanent injunction, mandatory injunction and other consequential reliefs. The petitioner filed written statement on 16.11.2012 and is contesting the suit. Trial commenced. Respondent let in evidence and closed his side. Petitioner filed I.A.No.180 of 2016 under Order VIII Rule 9 and Section 151 of C.P.C., to receive additional written statement and I.A.No.181 of 2016 under Order VIII Rule 1-A of C.P.C., to receive additional documents filed by the petitioner.

4. According to the petitioner, at the instance of the respondent, an Advocate Commissioner was appointed and he inspected the property and filed his report with incorrect particulars. The petitioner filed a petition to scrap the report of the Advocate Commissioner and to appoint another Advocate Commissioner. The

said application was allowed and another Advocate Commissioner was appointed. He also filed a report with incorrect particulars, after inspection. The second Advocate Commissioner in his report mentioned some measurements with incorrect calculation. The petitioner filed written statement at the initial stage of the suit and after the report of the Advocate Commissioner, necessity has arisen to file additional written statement and documents.

5. Respondent filed counter affidavit opposing the said application and submitted that respondent purchased the property on 15.12.2008 and the petitioner has purchased the property only on 28.06.2010. The petitioner has filed the application belatedly only to drag on the proceedings. Having admitted in the written statement that his property is situated on the northern side of the respondent's property and his vendors have wrongly identified his site, he has constructed the house in the respondent's property. In view of the said admission, it is not open to the petitioner to file additional written statement and additional documents based on the report of the Advocate Commissioner.

6. The learned Judge considering the averments made in the

affidavit, counter affidavit and report of the Advocate Commissioner, dismissed the applications holding that the petitioner has not given any convincing reason for permission to file additional written statement and additional documents.

7. Against the order of dismissal dated 23.03.2017 made in I.A.Nos.180 and 181 of 2016, the present civil revision petitions are filed by the petitioner.

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

9. From the materials available on record, it is seen that the petitioner has filed two applications in I.A.Nos.180 and 181 of 2016 to receive additional written statement and additional documents filed by the petitioner. When a party seeks to file additional written statement or additional documents, he must satisfy the Court that the same are necessary to decide the issue in the suit. The Court has to be satisfied that the said application will not delay the conclusion of the trial and disposal of the suit. The Court also must satisfy that the belated application will not prejudice the plaintiff. In

the present case, the petitioner has filed the application on the ground that the second Advocate Commissioner inspected the property and filed report with incorrect measurements and incorrect particulars, in view of the same, additional written statement and additional documents are necessary to decide the issue. The reason given by the petitioner is not acceptable and valid. The report of the Advocate Commissioner is not final and it is for the Court to take assistance of the said report to arrive at a decision independently by appreciating the evidence let in by the parties.

10. The learned Judge considering all the materials available on record dismissed the applications by giving cogent and valid reasons. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 23.03.2017.

11. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

19.06.2017

Index:Yes/No

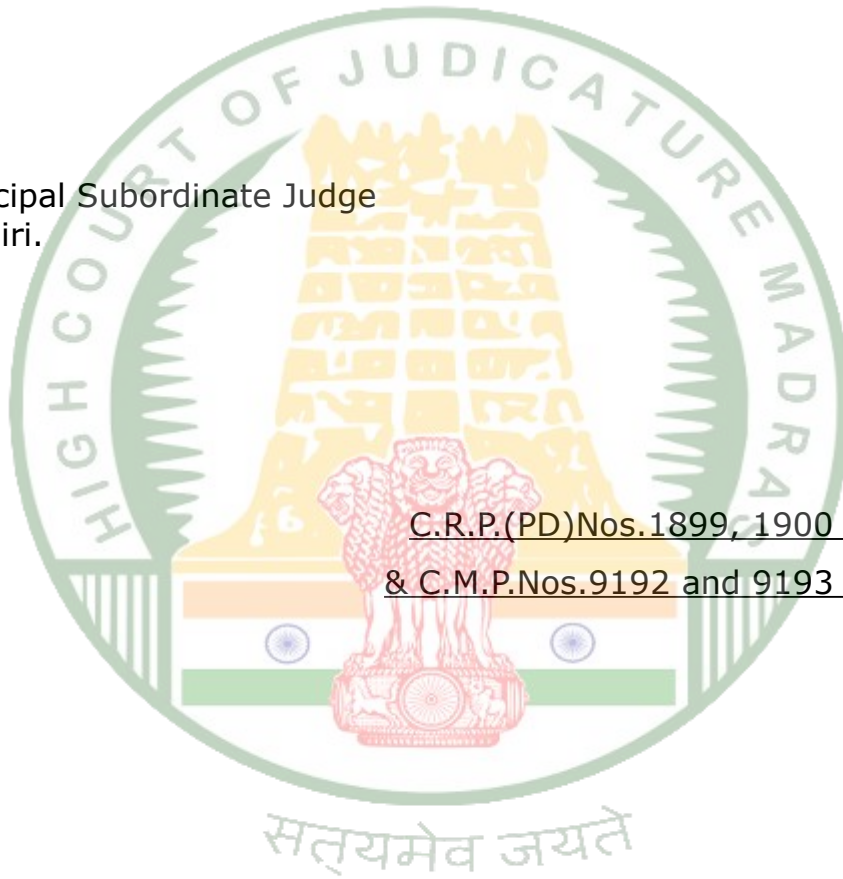
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V.M.VELUMANI,J.

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To

The Principal Subordinate Judge
Krishnagiri.



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