

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.08.2017**

CORAM:

THE HONOURABLE MR. **JUSTICE M.GOVINDARAJ**

C.R.P.(PD)No.2747 of 2017

and

C.M.P.No.13035 of 2017

P.Chinnappan

...Petitioner

Vs.

1.Venugopal

2.V.Rajeswari

3.Thiruvaduthurai Aadinam

Rep. by its Manager

... Respondents

Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside both the fair and decretal orders dated 29.06.2017 made in I.A.No.2222/2017 in O.S.No.13229/2009 on the file of IV Assistant Judge, City Civil Court, Chennai and allow the above I.A.No.2222/2017, directing the court below to restore the above I.A.No.2222/2017 and for appointing an Advocate Commissioner for local investigation of the suit A and B Schedule property and note the physical features and measure the suit A and B Schedule property as well as the leasehold of six cents under the lease deed dated 11.03.1987 in favour of Rajeshwari the 2nd Respondent herein as well as

the lease hold of nine and half cents under the lease dated 23.04.1982 in favour of Mr.P.Chinnappan, the petitioner herein and specifying the respective hold in different colour in the plan to be prepared with the help of the town surveyor and to submit a report with plan drawn to scale.

For Petitioner : Mr.M.V.Karunakaran

ORDER

The petitioner has filed this petition to appoint an Advocate Commissioner for local investigation of the suit A and B Schedule property and note down the physical features and measure the suit A and B Schedule property as well as the leasehold of six cents under the lease dated 11.03.1987 in favour of Rajeshwari the 2nd Respondent herein as well as the lease hold of nine and half cents under the lease dated 23.04.1982 in favour of the petitioner and specifying the respective leasehold in different colour in the plan to prepare with the help of a Town Surveyor and to submit a report with plan drawn to scale.

2.The trial court has considered the issue and observed that the petitioner has filed an application to appoint Advocate Commissioner in

I.A.No.25254 of 2009 and the same was dismissed for non prosecution.

Again the Review Application in I.A.No.6065 of 2010 was also dismissed on 26.10.2010. Then the second application filed by the petitioner for the same relief in I.A.No.2827 of 2013 was also dismissed on 20.02.2014 for non giving of notice of hearing to respondents 1 to 3. Yet another application filed in I.A.No.10511 of 2014 which was also dismissed. Now, the petitioners have come forward with the present application for appointment of Advocate Commissioner, after a lapse of nearly seven years.

3.As far as the six cents mentioned in the petition in the lease deed dated 11.03.1987 is concerned, under the directions of the High Court in C.R.P.No.568 of 2010, filed by the second respondent herein, a fresh Advocate Commissioner was appointed to measure the property and file a report and the petitioner has also raised his objections to the report submitted.

4.The trial court after considering the factual documents of the case has found that the present petition has been filed after a lapse of seven years only for the purpose of collecting the evidence and to find out the extent of land in his possession as well as in possession of the respondent. Therefore, the petition for appointment of Advocate

Commissioner was dismissed as it is only for collecting the evidence and find out the possession.

5.Considering the factual averments, the petitioner has admittedly given his consent before this court in C.R.P.No.568 of 2010 for appointment of a fresh Advocate Commissioner in respect of the suit property in O.S.No.977 of 2005. The Advocate Commissioner has also filed a report and the petitioner has also submitted his objections to the same.

6.When the matter is now posted for trial, the present application is totally not warranted and the petitioner would agitate the same issue by way of a fresh appointment of an Advocate Commissioner. The findings of the trial court that it is an attempt to collect evidence and to find out the possession of the parties is well founded and order passed by the trial court in dismissing application for appointment of the Advocate Commissioner is correct and it does not require any interference.

7. Accordingly, this Civil Revision Petition is dismissed.

Consequently, connected miscellaneous petition is closed. No costs.

07.08.2017

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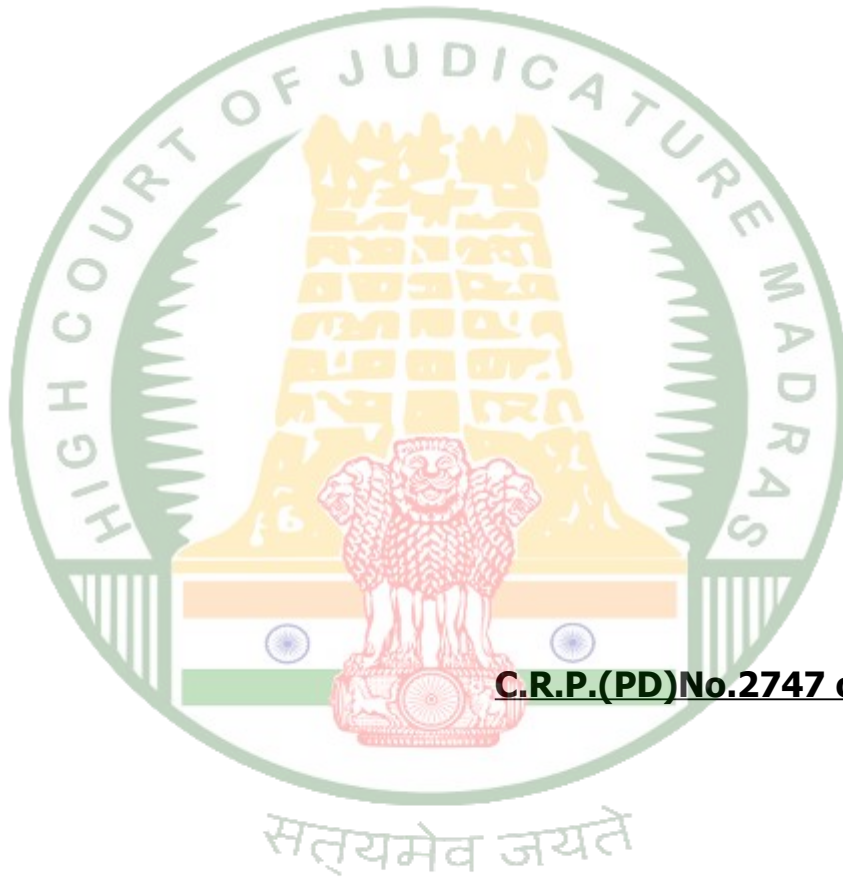
The IV Assistant Judge,
City Civil Court,
Chennai.



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M.GOVINDARAJ.,J.

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