

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(PD) NOS.3148 AND 3149 OF 2017
AND CMP NO.14773 OF 2017

Kanniammal

... Petitioner
in both CRPs'

Vs.

1.Chellammal

2.The Commissioner
Corporation of Chennai
Ribbon Buildings
Chennai - 600 003.

... Respondents
in both CRPs'

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal order dated 20.07.2017 made in I.A.Nos.7541/2017 and 7542/2017 in O.S.No.3174/2010, on the file of XV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.S.Umapathy
For Respondents : Mr.G.RM. Palaniappan

COMMON ORDER

These Civil Revision Petitions are directed against the dismissal of the interlocutory applications filed before the Trial Court for appointment of Advocate Commissioner.

2. The petitioner is the encroacher of the property belonging to Corporation of Chennai. The first respondent filed a suit for removal of encroachment and for permanent injunction. The contention of the petitioner is that the encroachment made by her will not hamper the access of the first respondent. She has taken a stand that the land belongs to the Revenue Department and not to the Corporation of Chennai. Therefore, she has filed an interlocutory application in I.A.No.1897 of 2017 for reopening the evidence of petitioner's side and also another application in I.A.No.1901 of 2017 for issuance of subpoena to the officials of the Corporation with regard to the property register maintained by them. Both the interlocutory applications were dismissed as they were filed at the time when the suit was posted for arguments. Against that order, the petitioner has preferred a Civil Revision Petition. This Court has dismissed the Civil Revision Petition. While dismissing the Civil Revision Petition, the Court has also given a direction to the second respondent

Corporation to coordinate and protect the interest of the Corporation. Therefore, the petitioner has filed the application to reopen the case as well as another application to issue summons to the Divisional Revenue Officer to let in evidence as the land does not belong to the Corporation. The same was dismissed by the Trial Court. As the case is posted for arguments, the application for appointment of Advocate Commissioner is not sustainable.

3. I have heard the submissions made on either side and perused the materials available on record.

4. Admittedly, the petitioner is an encroacher. The petitioner claims that the property belongs to the Government and not to the Corporation. It is also submitted on behalf of the petitioner that the encroachment made by her will not hamper the access to the first respondent / plaintiff. It is well settled that in case of encroachment, the encroacher has no right to the property and cannot seek any legal right to sustain the encroachment. Further, an Advocate Commissioner cannot be appointed to find out the encroachment as it is clearly admitted by the petitioner herself. Furthermore, reopening the case for evidence of

Divisional Revenue Officer to say that the land belongs to the Government will not help the petitioner to advance her case and whether it belongs to the Government or to the Corporation of Chennai, it will not change the status of the petitioner as encroacher and will not confer any title or right over the encroached area. Therefore, the Trial Court has rightly found that when the matter is posted for arguments, the attempt of the petitioner to reopen the case is nothing but an attempt to drag on the proceedings as long as possible. Therefore, this Court is of the considered opinion that the Civil Revision Petitions filed by the petitioner are not sustainable and accordingly, dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

11.12.2017

Index : Yes/No

Internet : Yes/No

TK

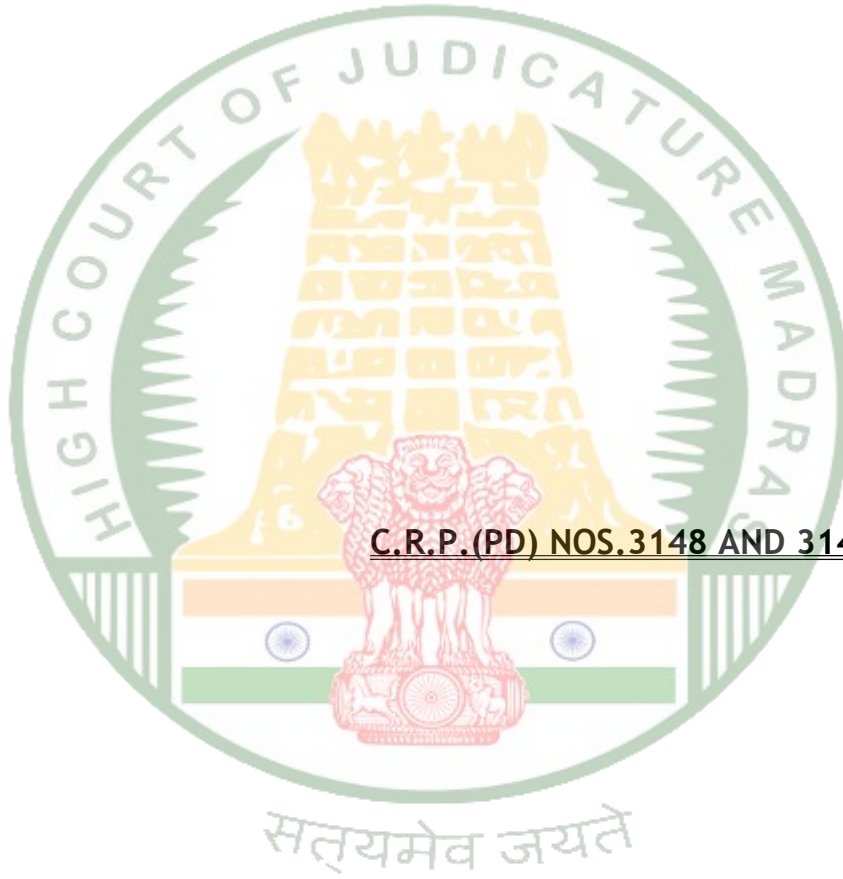
To

The XV Assistant Judge
City Civil Court
Chennai.

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M.GOVINDARAJ, J.

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