

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 3187 of 2017
and
C.M.P.No. 14901 of 2017

1. Pachiammal
2. Suppose, W/o.P.Raji(Died)
3. Lakshmi
4. R.Selvam
5. Genga
6. Kumari

.. Petitioners

Vs

- 1.The Executive Office,
Arilmigu Hariprasadeeswara Gajendira
Varadarajaperumal Koil,
Karivedu Village, Arakkonam taluk,
Vellore District.

2. The Assistant Commissioner,
H.R. & C.E. Department,
Vellore.

3. The Commissioner,
H.R. & C.E. Department,
Chennai-34.

4. Marimuthu

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 08.03.2017, passed in I.A.No.69/2016 in A.S.No.107/2014, on the file of Sub ordinate Judge, Arakkonam.

For Petitioners : Mr. A.Gouthaman

ORDER

The Civil Revision Petition arises against the fair and decreetal order dated 08.03.2017, in I.A.No.69/2016 in A.S.No.107/2014, passed by the Sub ordinate Judge, Arakkonam.

2. The petitioners have filed the suit in O.S.No.113 of 2007 for declaration and permanent injunction. The respondents filed the written statement and thereafter the said suit was dismissed by the trial Court. Challenging the said Judgment and decree passed by the trial court, the petitioners preferred an appeal in A.S.No.107 of 2014 before the Sub Court, Arakkonam. Pending the aforesaid appeal suit, the petitioners preferred an application in I.A.No.69 of 2016, for appointment of an Advocate Commissioner, to inspect the suit property, along with the taluk surveyor, to note whether there is a terraced house

in the petitioners' suit schedule property, situated in Dry S.F.No.141, at Karivedu Village , Arakkonam Taluk. The court below dismissed the said application. Challenging the said order, the petitioners have filed the present revision petition.

3. The learned counsel for the petitioners would submit that the instant application has been filed by the petitioners to prove the existence of the terraced house with electric service connection and the bricks kiln inside the property and to note down the physical features of the suit property. However, without appreciating the case of the petitioners, the Appellate Court has dismissed the application.

4. It is seen from the above narrated facts that the petitioners have filed the Interlocutory Application in I.A. No.69 of 2016 for appointment of the Advocate Commissioner, to note down the nature of the house in the schedule mentioned property. According to the petitioners, they can file the said application even in the Appeal Suit, to prove the existence of the terraced building in the suit property. It is true that the petitioners have not chosen to file the said application,

pending the suit. Further, the petitioners have filed the suit for declaration and permanent injunction. The petitioners have claimed the title over the property and have filed the documents before the trial court, to prove that the petitioners have right over the property and also that the petitioners are in possession of the suit property. Subsequently, the petitioners have filed the Appeal Suit in A.S. No. 107 of 2014 and the same is pending before the Appellate Court. When the petitioners have already filed the documents and oral evidence before the trial court to prove that the petitioners are in possession of the suit property, the relief can be granted only on the basis of the oral and documentary evidences, adduced by both the parties. The construction of the terraced building in the suit property can also be decided on the basis of the documents filed by the petitioners/ plaintiffs. In view of the above, the lower Appellate Court has rightly rejected the said application. Therefore, there is no error or illegality in the order passed by the lower appellate court and the present revision filed by the petitioners cannot be entertained.

5. In view of the above, the Civil Revision Petition fails and the same is dismissed. Consequently the connected Miscellaneous Petition is closed. No order as to costs.

24.10.2017

Index: Yes/No

Speaking order/ Non speaking order

avr/msvm

To

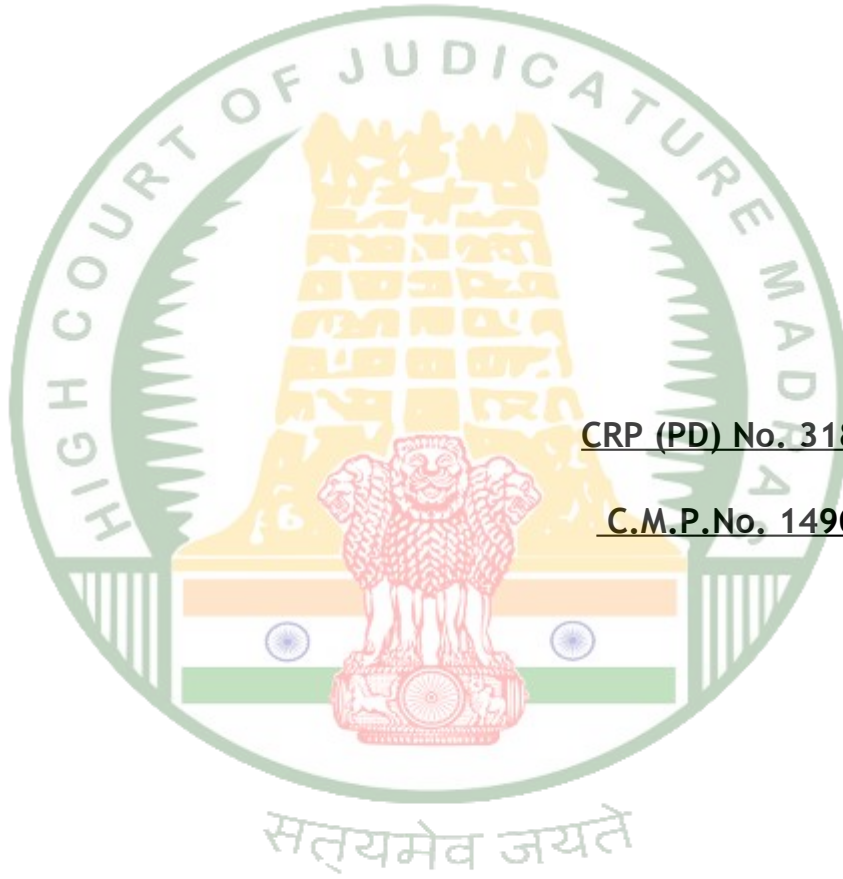
The Sub ordinate Judge,
Arakkonam.



WEB COPY

D. KRISHNAKUMAR,J.

avr



CRP (PD) No. 3187 of 2017
and
C.M.P.No. 14901 of 2017

24.10.2017

WEB COPY