

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated : 06.11.2017**

**CORAM**

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR**

**C.R.P.(PD).No.3956 of 2017**

**and**

**C.M.P.No.18476 of 2017**

S.M.Shamsuddin .... Petitioner

- Vs -

Mr.Bhaskar .... Respondent

**Prayer :** Writ Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 23.02.2017 passed in I.A.No.618 of 2016 in O.S.No.226 of 2010 on the file of the Subordinate Judge, Poonamallee.

For Petitioner : Mr.G.Ashokapathy  
for M/s.Pass Associates

**ORDER**

According to the learned counsel for the petitioner, the respondent/plaintiff has filed a suit for declaration of title, recovery of possession and mandatory injunction.

2. According to the learned counsel for the petitioner, the petitioner has purchased the suit property in the year 1986 who was in abroad and hence could not visit the suit property which was a vacant site and taking advantage of his absence, the respondent has encroached upon the suit property and built up a house and the petitioner made a complaint to the police station and also issued legal notice and he states that it is necessary to appoint an Advocate Commissioner along with Taluk Surveyor to inspect the suit property.

3. The respondent has filed counter statement and stated that the present application has been filed belatedly, after filing of the suit. The intention of the petitioner is to protract the proceedings and he wants to dismiss the application. The court below has dismissed the said application, by holding that there is no reason stated for appointing the Advocate Commissioner, nearly after 6 years of the suit and therefore, the trial court has dismissed the application. Against which, the petitioner has preferred this revision before this Court.

4. The learned counsel for the petitioner would submit that the application for appointment of Advocate Commissioner is to inspect the suit property along with the Taluk Surveyor to furnish a report by co-

relating the details of patta, chitta, adangal, town survey field register. On the basis of the report, the court below has to commence evidence and determine the real issues involved in the said suit and therefore, the order passed by the court below is liable to be set aside.

5. By considering the submission made by the learned counsel for the petitioner, based on the materials and on perusing the reasons stated in the affidavit that the petitioner has not stated the reasons for appointment of Advocate Commissioner, after a delay of more than 6 years, that too at the stage of evidence of the defendant's side. Further, the reasons stated in the affidavit for appointment of Advocate Commissioner to inspect the suit property along with the Taluk Surveyor to furnish a report by co-relating the details of patta, chitta, adangal, town survey field register, by adducing oral and documentary evidence. Therefore, the court below has rightly dismissed the said application and there is no error or illegality in the order passed by the trial court. Accordingly, the civil revision petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

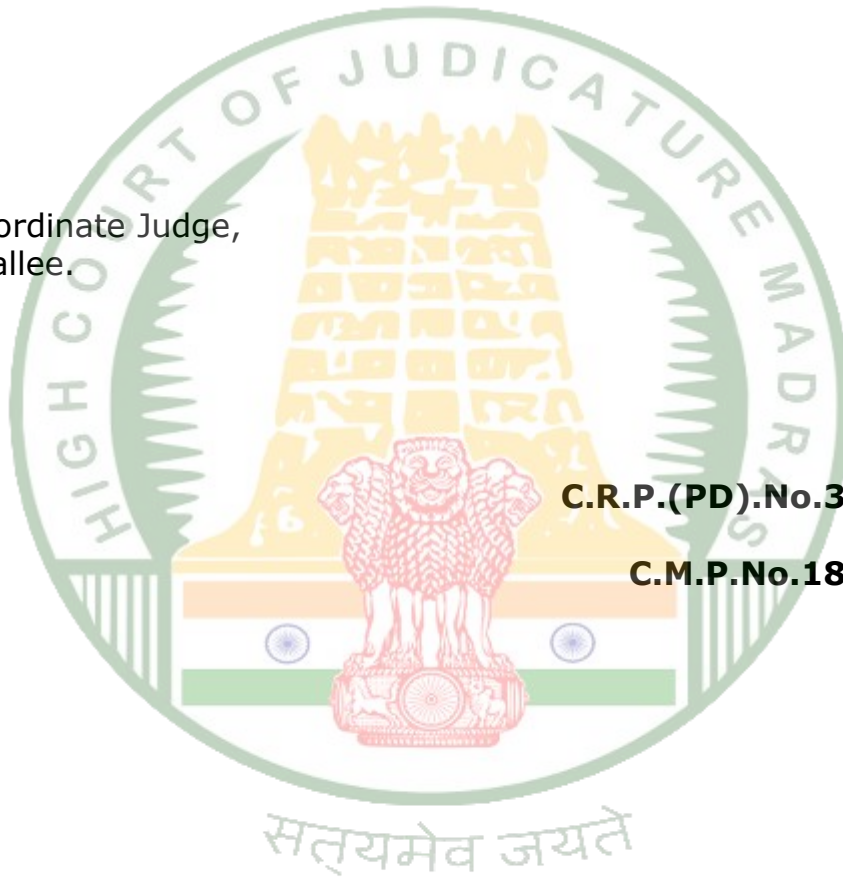
06.11.2017

Intex:Yes/No  
Speaking order/Non-speaking order  
ssn

**D.KRISHNAKUMAR, J.,**

ssn

To  
The Subordinate Judge,  
Poonamallee.



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**06.11.2017**