

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2017

CORAM

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

CRP.PD.No.4054 of 2017

and

C.M.P.No.18954 of 2017

1. Chinnaponnu

2. D.Koteeswaran

... Petitioners

Vs.

Annamalai

... Respondent

Prayer: The Civil Revision Petition has been filed under Article 227 of the Constitution of India against the order passed in I.A.No.1160 of 2017 in O.S.No.29 of 2011 dated 07.09.2017 on the file of the Principal District Munsif Court, Vellore.

For Petitioners

: Mr.R. Margabandhu

ORDER

The petitioner is the defendant in the suit. The plaintiff/respondent filed a suit for declaration and injunction. In the aforesaid suit, the respondent had filed an interlocutory application in I.A.No.175 of 2011 for appointment of an Advocate Commissioner. The aforesaid application was allowed and the Advocate Commissioner

inspected the suit property and submitted a report. Thereafter, the plaintiff has filed the present application in IA.No.1160 of 2017 to reinspect the property or appoint fresh commissioner to measure the property on the basis of the documents. Counter statement has been filed by the respondent. After hearing both the parties, the Court below dismissed the said application. Challenging the said order, the petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the petitioner submit that the plaintiff has sold the portion of A-schedule property to an extent of 35 feet X 38 feet as described in B-Schedule property. The plaintiff is in possession of his property and the petitioner / defendant is in possession of B-Schedule property but the Commissioner has filed a report stating that the petitioner / defendant encroached 4 feet in the respondent / plaintiffs property. She did not encroached any portion of the plaintiffs property and therefore it is necessary to direct the Advocate Commissioner to re-inspect the property to resolve the dispute between the parties.

3. Heard the learned counsel for the petitioner and perused

the available materials.

4. The Instant application have been filed to re-inspect the property or by a fresh commission on the basis of the documents. The respondent initially filed an interlocutory application in I.A.No.1160 of 2017 to inspect the property with the help of surveyor. The property was inspected in the present of the petitioner, Surveyor and Village Administrative Officer on 24.09.2011. Report was filed on 27.09.2011. Thereafter, the petitioners / defendants filed their objection to the report of the Advocate Commissioner. Thereafter, the issues were framed on 17.06.2014, then the suit was decreed ex-parte on 21.08.2014 and the suit was restored on 23.11.2016 and thereafter PW1 to PW3 were examined. When the suit was posted for cross examination, the instant application has been filed belatedly i.e. nearly after six years for re-inspection of the suit property. There is no explanation for this inordinate delay in filing the instant application. The petitioner can examine the Advocate Commissioner during trial, if necessary. Therefore, the petitioner has not made out any case to interfere with the order impugned.

5. In the result, the Civil Revision Petition is dismissed

accordingly. No costs. Consequently, connected miscellaneous petition is also closed.

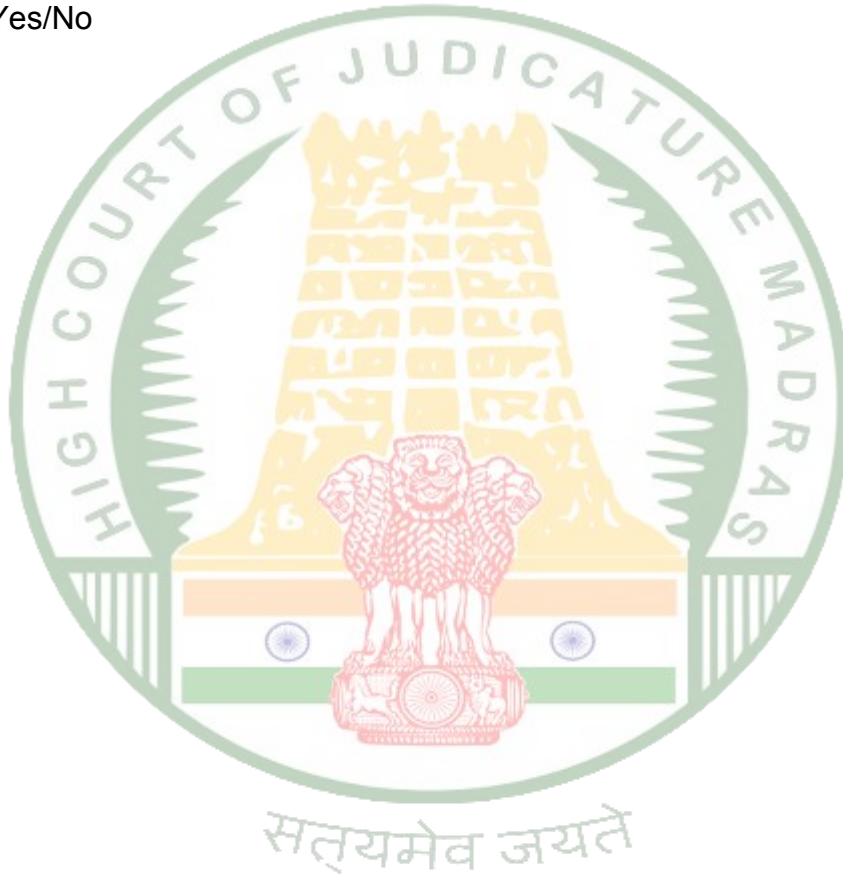
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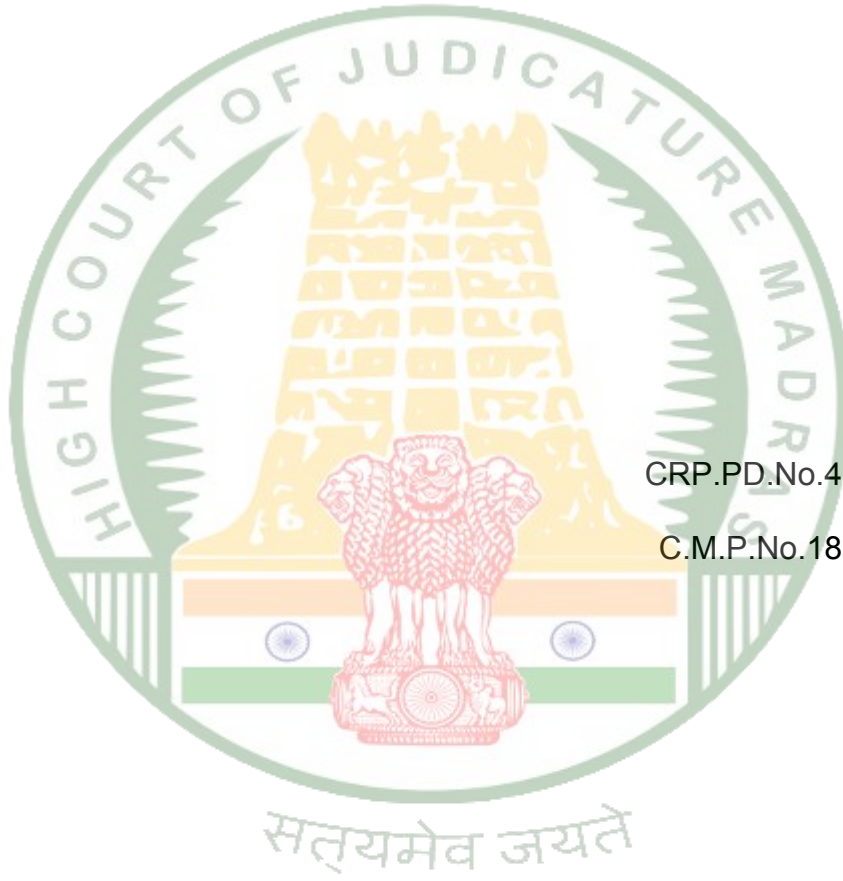
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Vellore.



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D. KRISHNAKUMAR J.

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