

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3737 of 2014
& M.P.No.1 of 2014

1.K.R.Pazhani Chettiar
2.P.Sharmila
3.P.Sadhana

.. Petitioners

Vs.

Kanthimathi

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 02.07.2014 made in I.A.No.170 of 2013 in O.S.No.113 of 2012 on the file of the learned District Munsif, Tiruvallur.

For Petitioners : Mr.G.Suryanarayanan

For Respondent : Mr.Manjunath for
Mr.N.R.Anantha Rama Krishnan

ORDER

This Civil Revision Petition has been filed against the order and decretal order dated 02.07.2014 made in I.A.No.170 of 2013 in O.S.No.113 of 2012 on the file of the learned District Munsif, Tiruvallur.

2. The petitioners are the defendants and respondent is the plaintiff in O.S.No.113 of 2012 on the file of the learned District Munsif, Tiruvallur. The respondent filed suit for declaration and consequential permanent injunction. The petitioners filed written statement on 26.11.2012 and are contesting the suit.

3. The respondent filed I.A.No.170 of 2013 for appointing an Advocate Commissioner to inspect the schedule property and note down the physical features with reference to the nature, age, character and stage of the constructions being illegally put up by the petitioner in Survey No.58/5B petition schedule item No.1 and to file a report with a plan drawn to scale. According to the respondent, the petitioners have encroached the petitioners property and constructed in Survey No.58/5B.

4. The petitioner filed counter and submitted that the respondent has to prove his case and Commissioner cannot be appointed to find out the boundaries and as to who is in possession of the suit property. The petitioners have not encroached the property and constructed in Survey No.58/5B. They have put up the

construction only in Survey No.58/4.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, and the judgments relied on by the learned counsel for the petitioners, held that the judgments relied on by the learned counsel for the petitioners, are not applicable to the present case and it was also held that there is a dispute with regard to the property and boundaries, as respondent has mentioned only Survey number, the Advocate Commissioner shall be appointed to measure the suit property with the help of Surveyor and to file report, partly allowed I.A. and partly dismissed I.A. in respect of the prayer to note down the physical features with reference to the nature, age, character and stage of the construction illegally put up by the petitioners.

6. Against the portion of the order of dismissal dated 02.07.2014 made in I.A.No.170 of 2013, the present civil revision petition is filed by the petitioners.

7. Heard both sides and perused the materials available on record.

8. From the materials on record, it is seen that respondent is claiming that the petitioners have encroached his property in S.No.58/5B pending suit but put up construction. It is the contention of the petitioners that they have not encroached S.No.58/5B and put up construction only in S.No.58/4. In view of the dispute with regard to the property, the learned Judge has rightly held that appointment of Advocate Commissioner with the help of a Surveyor to measure the suit property is only to assist the Court. In these circumstances, there is no illegality or irregularity warranting interference by this Court in the order of the learned trial Judge, dated 02.07.2014. In the result, this Civil Revision Petition is dismissed.

9. Since the suit is of the year 2012, the learned Judge is directed to dispose of the suit in O.S.No.113 of 2012 as expeditiously as possible, in any event not later than four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

29.06.2017

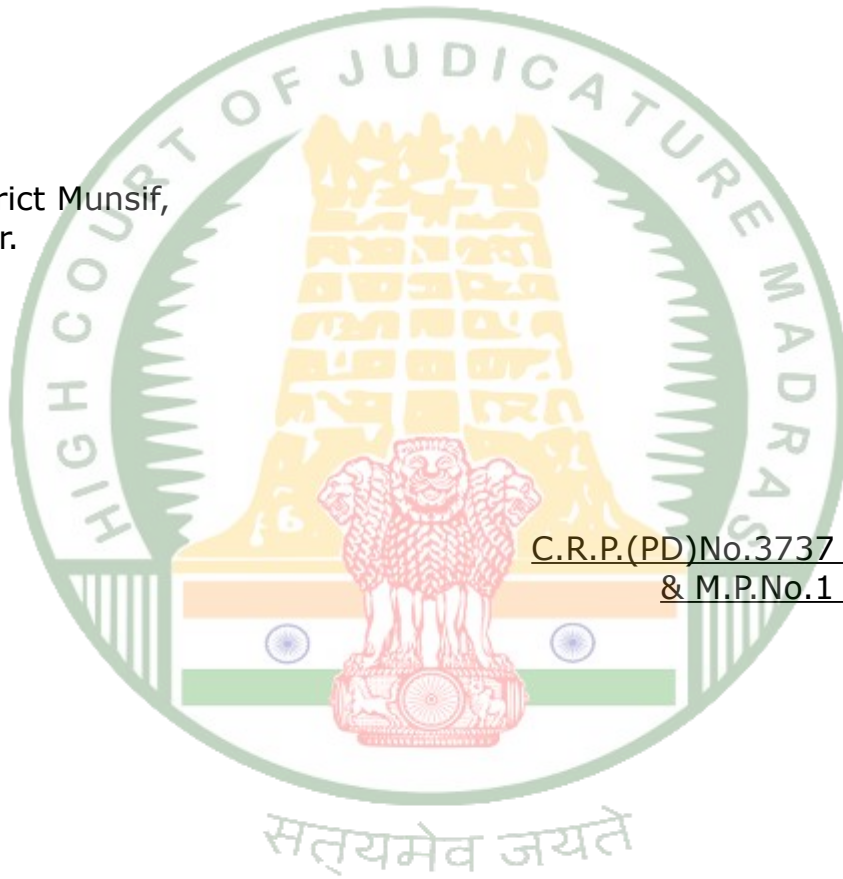
Index : Yes
dm/jv

V.M.VELUMANI, J.

dm/jv

To

The District Munsif,
Tiruvallur.



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