

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2017

CORAM

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

C.R.P.(PD).No.4073 of 2017

Roja Ammal

... Petitioner

Vs.

1. Vijayalakshmi

2. V.Shanmugam

3. M.V.Viswanathan

4. P.Kowsalya

5. P.Sowmya

... Respondents

Prayer: The Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the Docket Order passed in I.A.CFR. No.1994 of 2017 in IA.No.242 of 2015 in O.S.No.66 of 2014 dated 07.10.2017 on the file of the III Additional District Court at Poonamallee.

For Petitioner : Mr.M.A.P.Thangavel

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ORDER

The petitioner has filed the Civil Revision Petition against the order in I.A.CFR. No.1994 of 2017 in IA.No.242 of 2015 in O.S.No.66 of 2014 dated 07.10.2017 on the file of the III Additional District Court at Poonamallee. The

said suit was contested and common judgment was passed on merits 03.01.2017.

2. The learned counsel for the petitioner contended that she purchased the "A" Schedule property through a sale deed dated 25.11.1974. Since the defendants in the suit and the mother of the plaintiff, attempted to trespass into the suit schedule property, the petitioner herein filed a suit in O.S.No.521 of 1989 before the District Munsif Court, Poonamallee, which was subsequently transferred to District Munsif court, Ambattur and was renumbered as O.S.No.1699 of 1997. Again the petitioner has filed a suit in O.S. No.182 of 1999 and the defendants filed a suit in O.S.No.245 of 1999 regarding usage of the 5 ft. passage, on which a common judgement and decree was passed on 03.01.2017. Later, the 1st respondent herein filed a suit in O.S. No. 66 of 2014 praying for partition and permanent injunction against the respondents 2 to 5 herein. Therefore, the petitioner filed an application in I.A.CFR. No.1994 of 2017 to implead herself as one of the respondent.

3. According to the petitioner, she is a necessary party in the present suit. Suppressing all the earlier suits, the present suit in O.S.No.66 of 2014 has been filed to defeat the lawful right of the petitioner from using the passage. The petitioner filed the application seeking to implead her before final decree is passed. But, the learned Principal District Judge has returned the petition on

18.09.2017 on the ground that the survey Number mentioned in I.A. No. 242 of 2015 and the instant petition was different. The learned counsel for the petitioner has re-presented the petition with explanation. Again on 03.10.2017. the learned Judge returned the papers for want of judgement and decree in O.S.No.245 of 1999. The learned counsel for the petitioner on 07.10.2017 presented a copy of the judgement along with the petition. However, on the same day, the learned Judge dismissed the petition with a cryptic order, which follows as follows :

"Heard on maintainability. In the result this petition is rejected as not maintainable."

4. Heard the submissions of the learned counsel for the petitioner and perused the material available on records.

5. It is found that earlier the learned Principal District Judge has returned the petition for want of the original judgement and decree passed in O.S.No.245 of 1999, but without recording any reasons the learned Judge has simply dismissed the petition.

6. Therefore, this court has no hesitation to set-aside the impugned order the order passed in I.A.CFR. No.1994 of 2017 in IA.No.242 of 2015 in O.S.No.66 of 2014 dated 07.10.2017. However, the petitioner is directed to re-present the petition and the learned III Additional District Judge at Poonamallee shall

consider the same, in accordance with law and pass appropriate orders. The Registry is directed to return the original papers in I.A. No.242 of 2015, to the counsel for the petitioner, after obtaining a copy of the same.

7. The Civil Revision Petition is allowed, with the above direction. No order as to costs.

10.11.2017

Speaking/Non-Speaking order

Index :Yes/No

[Issue Order Copy on 14.11.2017]

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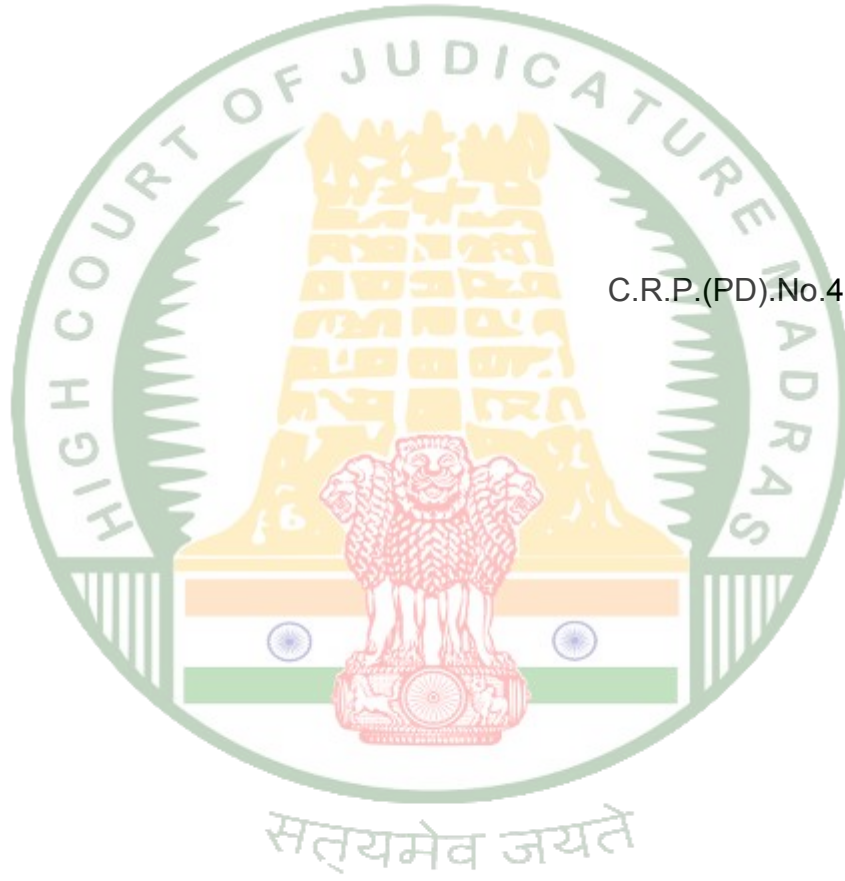
The III Additional District Court,
Poonamallee.



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D. KRISHNAKUMAR J.

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