

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3787 of 2014
& M.P.No.1 of 2014

1.Ammakannu
2.Lakshmanan
3.Siddaiyan

.. Petitioners

Vs.

1.Natesan
2.Govindaraj

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.09.2013 made in I.A.No.470 of 2013 in O.S.No.44 of 2008 on the file of the Subordinate Court, Mettur.

For Petitioner : Mr.C.Rajasekaran

For Respondents : Mr.R.Jayaprakash

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 06.09.2013 made in I.A.No.470 of 2013 in O.S.No.44 of 2008 on the file of the Subordinate Court, Mettur.

2. The petitioners are the defendants and respondents are the plaintiffs in O.S.No.44 of 2008 on the file of the Subordinate Court, Mettur. The respondents filed above suit for declaration with regard to cart track mentioned in the schedule and for permanent injunction. The petitioners filed written statement and are contesting the suit. Trial commenced and the respondents let in evidence and closed their side. The petitioners also examined D.W.1 and D.W.2. When the suit was posted for further evidence of petitioners, they filed the present I.A.No.470 of 2013 for reissue of warrant of commission.

3. According to the petitioners, Advocate Commissioner appointed in I.A.No.170 of 2008 filed by the respondents, visited the suit property on 24.04.2008 and 15.05.2008, without notice to the petitioners or their counsel, though they filed vakalat earlier. The Advocate Commissioner in the absence of the petitioners and their counsel has given report in favour of the respondents.

4. The respondents filed counter affidavit and submitted that the Advocate Commissioner issued notice to the petitioners and their counsel and inspected the suit property on 24.04.2008. At

request of the counsel for the petitioners, Advocate Commissioner again inspected the property on 15.05.2008 and filed her report on 04.06.2008. The petitioner also filed objections on 12.06.2008, which was marked as Ex.C3. The petitioners have not stated what are the physical features left out by the Advocate Commissioner and at the time of inspection, the petitioners have not pointed out any alternate cart track available to the respondents. Even in I.A.No.290 of 2008 filed by the petitioners to scrap the Commissioner's report, they have not mentioned about the physical features left out by the Advocate Commissioner. After examination of witnesses on behalf of both the parties and when the suit was posted for arguments, the petitioners have filed the present application only to drag on the proceedings and hence, they prayed for dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and especially, the Court documents marked as Exs.C1 to C6 through D.W.1/second petitioner herein, dismissed the application.

6. Against the said order of dismissal dated 06.09.2013 made in I.A.No.470 of 2013, the present Civil Revision Petition is filed by the petitioners.

7. Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

8. The learned counsel for the petitioners reiterated the averments made in the affidavit filed in support of the application and contentions raised in the grounds of revision and submitted that this Court, by order dated 01.12.2010 made in C.R.P.(PD)Nos.541 of 2009 and 1667 of 2010, while dismissing the said CRP, has given liberty to the petitioners to file a petition for reissue of warrant of commission. In support of his contention, he relied on the following order of this Court dated 12.03.2013 made in C.R.P.(PD)No.1669 of 2011:

"30. ... After obtaining the fresh Commissioner's Report together with Survey Plan/Map, the trial Court shall provide opportunities to either parties to file or raise objections in regard to the fresh Commissioner's report and it is open to the parties to summon the fresh Advocate Commissioner and the Surveyor and cross examine them and to consider the said evidence along with oral and documentary evidence to be adduced by the witnesses on either side at the time of final hearing of the suit. If situation so warrants, the

earlier Advocate Commissioner and the Surveyor, who filed his first Report and Plan, may also be examined by the parties in accordance with law as a witness before the trial Court in the main suit.”

9. The contention of the learned counsel for the petitioners that this Court granted liberty to the petitioners to file an application to reissue of warrant of commission, is without merits. This Court did not give any liberty to the petitioners to file application for reissue of warrant of commission. On the other hand, this Court only referred to the order of I.A. filed by the petitioners to scrap the report of the Advocate Commissioner, when it was mentioned that there is no impediment for the petitioners to file application seeking for reissue of warrant of commission. The petitioners have filed the present application after three years of dismissal of C.R.P.(PD)Nos.541 of 2009 and 1667 of 2010, after five years of filing of report by the Advocate Commissioner & objections filed by the petitioners, after conclusion of evidence on behalf of the respondents, after examining D.W.1 and D.W.2 by the petitioners and when the suit was posted for further evidence on behalf of the petitioners.

10. From the materials available on record, it is seen that the petitioners are seeking re-issuance of warrant of commission on the ground that no notice was issued to them or to their advocate, even though they entered appearance by filing vakalat. The Advocate Commissioner inspected the property in their absence and in the absence of Village Administrative Officer. On the other hand, the learned Judge has considered the Court documents Exs.C1 to C6 marked through D.W.1/second petitioner and held that the Advocate Commissioner visited and inspected the suit property on two occasions in the presence of the petitioners, their advocate and Village Administrative Officer. The Village Administrative Officer has also filed his plan. In view of the above facts, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge dated 06.09.2013.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

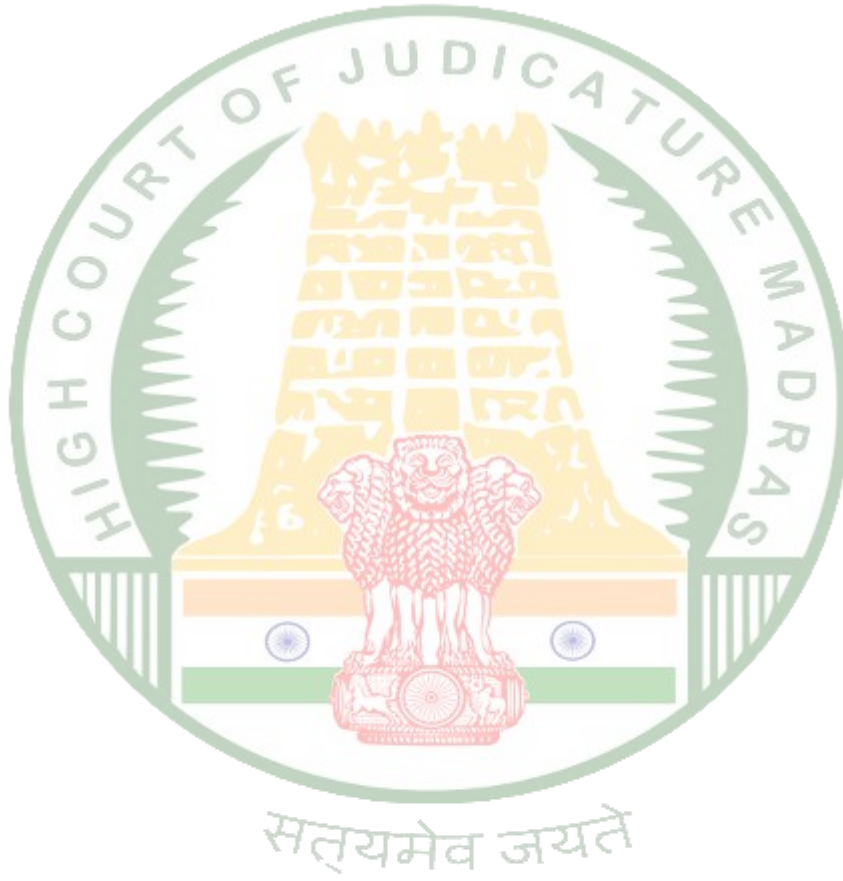
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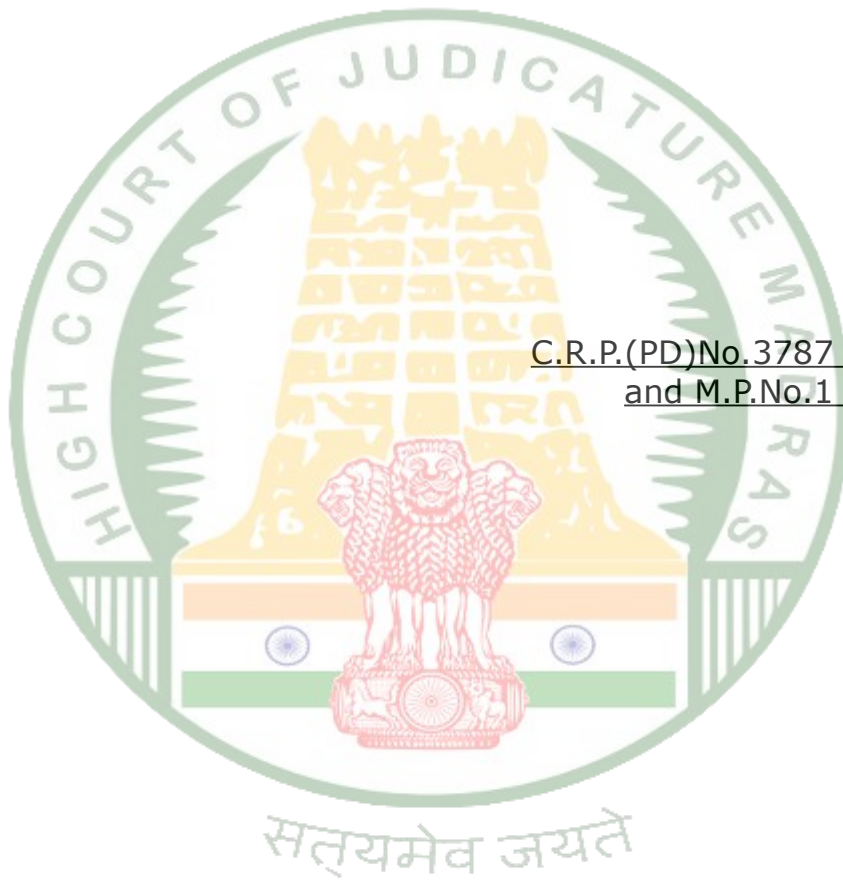
The Sub Judge, Mettur.



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V.M.VELUMANI, J.

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