

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 4167 of 2017
and
CMP Nos. 19516 & 21139 of 2017

P. Thangam

.. Petitioner

Vs

Suresh Krishnamoorthy

.. Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 04.09.2017 in I.A. No.510 of 2017 in O.S. No.21 of 2017 on the file of the learned Principal District Munsif Court, Poonamallee.

For Petitioner : Mr. N.Kumar Rajan

For Respondent : Mr. Adinarayana Rao

ORDER

This Civil Revision Petition arises against the fair and decreetal order dated 04.09.2017 in I.A. No.510 of 2017 in O.S. No.21 of 2017 passed by the Principal District Munsif Court, Poonamallee.

2. Brief facts of the case is as follows :

The petitioner has filed the suit in O.S. No. 21 of 2017 for mandatory and permanent injunction. In the aforesaid suit, the petitioner filed Interlocutory Applications, I.A. No.91/2017 for interim injunction and I.A.No.92/2017 for appointment of Advocate commissioner. The application in I.A.No.92/2017 was allowed and an Advocate commissioner was appointed to inspect the property. The learned Advocate Commissioner also filed his report before the court below, after inspection of the property. The respondent filed an objection to the report, on 17.03.2017. The court below granted an order of status quo on 09.06.2017 in I.A. No.91/2017 and directed the defendant/ respondent to file an application for appointment of Advocate Commissioner to inspect the suit property. Hence, the respondent filed an Interlocutory Application in I.A. No.510 of 2017, for which the petitioner filed counter affidavit. By order dated 04.09.2017, the learned Principal District Munsif, Poonamallee, allowed the application and appointed an Advocate Commissioner. The said order has been challenged in this revision petition.

3. The learned counsel for the petitioner would submit that the second application for appointment of Advocate Commissioner has been filed without any reasons and without scrapping the earlier report of the Advocate Commissioner. Therefore, the order of the court below is liable to be set aside.

4. The learned counsel for the respondent would submit that pursuant to the order passed by the court below on 09.06.2017, the learned Advocate Commissioner has submitted his report on 27.09.2017 and the revision petitioner has also filed his objections for the said report. According to the respondent, the petitioner has filed this revision petition and has obtained an order of stay suppressing the said facts before this Court. Hence, the respondent has filed CMP No. 21139/2017 for vacating the interim orders. The issue in the suit is to determine whether there is an encroachment in the suit property and hence appointment of an Advocate Commissioner, along with the Taluk Surveyor, to note down the physical features, with linear measurements on all sides, is necessary.

5. It is clear that pursuant to the order passed by the court below, a report has been filed by the Advocate Commissioner, who was appointed subsequently and the revision petitioner has also filed his objection. The said application has been filed based on the order passed by the court below to determine the issues in the suit. Subsequently, the interim application has also been closed. At this stage, the petitioner has to work out his remedy only before the trial court, if so advised.

6. In view of the above submissions of the learned counsel for both the parties, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No order as to costs.

11.12.2017

Speaking order/ Non speaking order

Index: Yes/ No

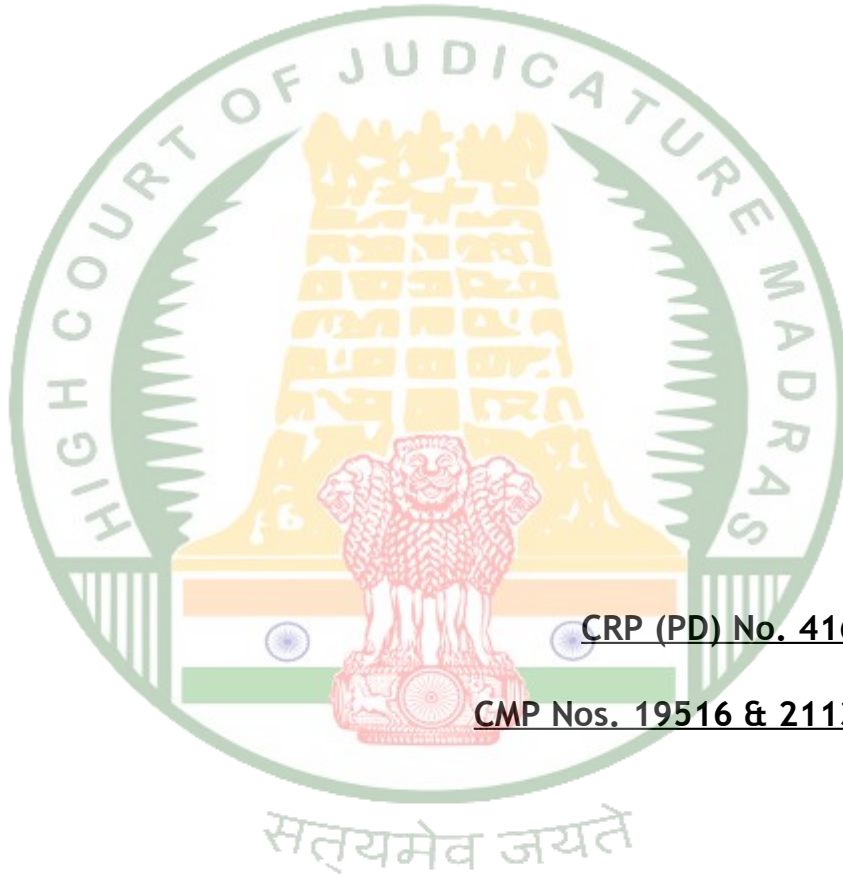
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To

The Principal District Munsif Court,
Poonamallee

D. KRISHNAKUMAR J.,

avr



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