

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P.(PD).No.4218 of 2017
and
C.M.P.No.19776 of 2017

1.V.Sivaraj

2. V.Kanagaraj

.. Petitioners

Vs.

1. R.Thirumoorthy

2. T.Rangaraj

3. T.Jayalakshmi

4. T.Easwari

5. T.Suseela

6. P.Subramaniam

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against Fair and Final Orders of the learned Subordinate Judge, Pollachi, dated 25.04.2017 in I.A.No.875 of 2014 in O.S.No.35 of 2010.

For Petitioner : Mr.N.E.A.Dinesh

ORDER

The respondents have filed the suit against the petitioners for declaration in O.S.No.35 of 2010, before the Subordinate Judge, Pollachi. Originally, the suit was dismissed for default and the same was restored. Thereafter, the plaintiff filed an application in I.A.No.875 of 2014 to appoint an Advocate Commissioner to inspect the suit property to find out whether any construction has been made in the suit property. Further, it is the contention of the respondent in the aforesaid application that eventhough the status quo has been obtained in I.A.No.559 of 2010, the petitioners have attempted to put up a construction in the suit property and the present I.A. No.875 of 2014 has been filed by the respondents/petitioners to note down the physical feature of the suit property by appointing Advocate Commissioner and the same was allowed by the Court below. Against the order passed by the Trial Court, the revision petition has been filed before this Court.

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2. The learned counsel for the petitioner would submit that the prayer in the suit is for partition and declaration and separate possession of the half share in the suit property. Therefore, the present

application is not maintainable by law and on facts. The respondents herein have filed an application by contenting that originally, I.A.No.559 of 2010 has been filed and interim status-quo was granted therein. Thereafter, the suit was dismissed for default. Thereafter, I.A.No.387 of 2013 has been filed to reopen I.A.No.559 of 2010 and the same was restored. In spite of interim order in force, the revision petitioners/defendants have proceeded with construction activities. The revision petitioners refuted the allegations made by the respondents/plaintiffs by stating that they have not disobeyed the court order and seek to set aside the order of the Court below.

3. On perusal of the record, it could be seen that the Court below has allowed the said application for appointment of Advocate Commissioner taking into consideration that as the interim order is pending before the court below and hence for resolving the issues involved in the suit, the physical features of the suit property has to be noted down by appointing of Advocate Commissioner. Therefore, the court below has rightly allowed the application and there is no warrant to interfere with the order passed by the court below.

D. KRISHNAKUMAR, J.,

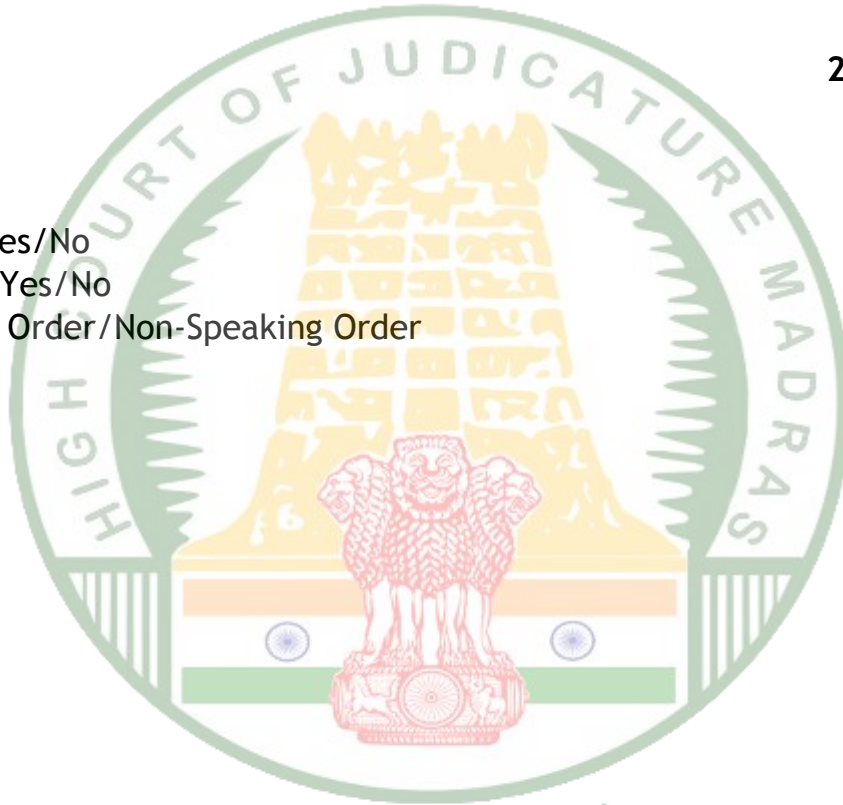
In view of the above facts, this civil revision petition is dismissed. No costs.

21.11.2017

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order

lbm

To
The Subordinate Judge,
Pollachi.



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