

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2017

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THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.(PD). No.4305 of 2017
and CMP.No.20245 of 2017

P.Arun Abraham ..Petitioner
Vs.
B.Philip Chandrahasan ..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decreetal order as made in I.A.No.12195 of 2017 in O.S.No.3309 of 2014, dated 23.10.2017 on the file of the XVth Assistant City Civil Court, Chennai, dismissing the application filed by the petitioner under Order XVIII Rule 17 of Civil Procedure Code .

For Petitioner : Mr.R.Karthikeyan

For Respondent : Mr.A.D.Janarthanan

ORDER:

According to the revision petitioner, the revision petitioner has filed a suit in OS.No.3309 of 2014 before the XV Assistant Judge, City Civil Court, Chennai against the respondent

seeking for mandatory injunction and to remove the unauthorised and illegal encroachment in the common area. In the aforesaid suit, the revision petitioner has filed an application in IA.No.9108 of 2014 to appoint an Advocate Commissioner to inspect the suit property. The Advocate Commissioner has submitted the report on 15.03.2015. Thereafter, the suit is posted for trial. The plaintiff side evidence was concluded and posted for examination of DW1. After the examination of DW1, the case was posted for cross examination of the Advocate Commissioner. At this stage, the revision petitioner has filed the instant application to reopen the evidence of the plaintiff in order to examine an Engineer. The respondent filed counter statement opposing the application. After hearing both sides, the court below dismissed the said application. Hence, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioner would submit that the Advocate Commissioner has submitted a report before the court below and he was examined as CW1. At this stage, the revision petitioner / plaintiff has filed the instant application to reopen the evidence of PW1 to ascertain as to whether the construction made by the plaintiff is consonance with

the plan approval. Therefore, a qualified engineer is required to be examined on the side of the plaintiff. If the said application is allowed and a qualified Engineer is examined, it will minimise the evidence in the said suit. Therefore, the order passed by the court below is liable to be set aside.

3. Per contra, the learned counsel for the respondent would submit that the plaintiff side evidence was concluded and defendant side evidence also concluded and thereafter CW1 was examined. At the stage of CW1 examination, the present application has been filed. The court below has rightly dismissed the said application. There is no warrants to interfere with the order passed by the court below.

4. During the course of arguments, the learned counsel for the revision petitioner would submit that any official Engineer can be appointed to inspect the suit property and to submit a report as to whether the construction of building is in consonance with the plan approval. The learned counsel for the respondent also submitted that any official Engineer may be appointed to inspect the property as requested by the learned counsel for the revision petitioner.

5. Therefore, in the light of the submissions made by the parties, this Court is inclined to pass the following orders.

(a) The order passed by the court below in IA.No.12195 of 2017 is set aside.

(b) The Revision petitioner is permitted to file formal application before the trial court to seeking direction to Corporation of Chennai to depute a qualified Engineer to inspect the suit property and submit a report before the court below within a period of four weeks from the date of receipt of a copy of this Order .

(c) Thereafter, the trial court shall consider the application and pass appropriate orders in the above application.

6. Thus, the Civil Revision Petition is allowed with above directions. Consequently, the connected miscellaneous petition is closed. No costs.

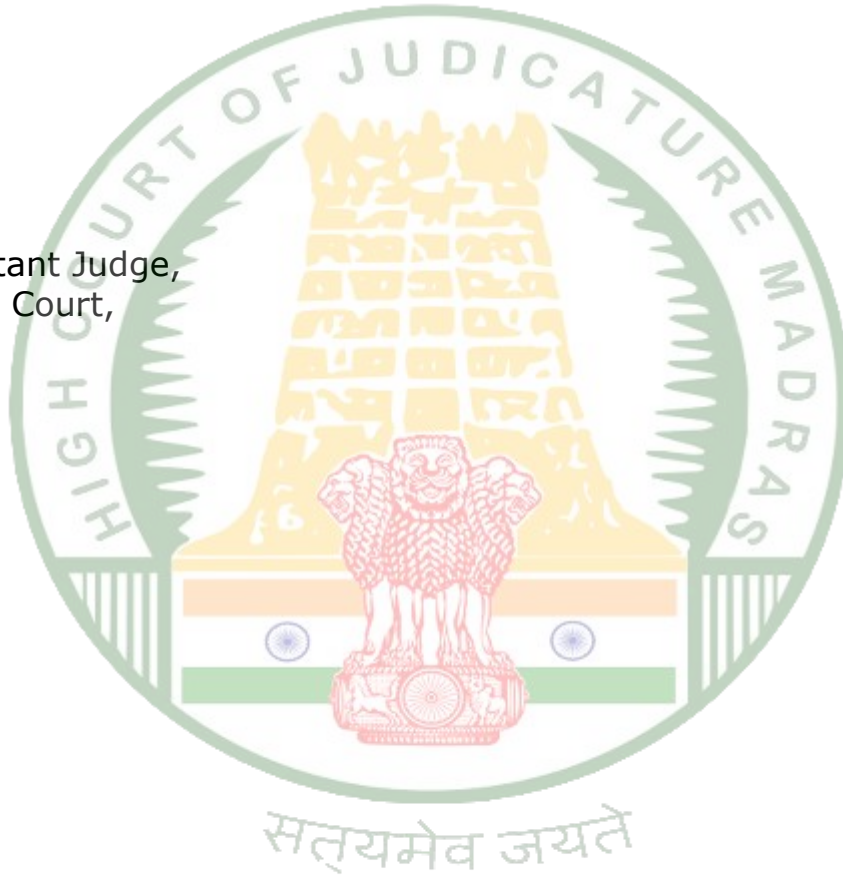
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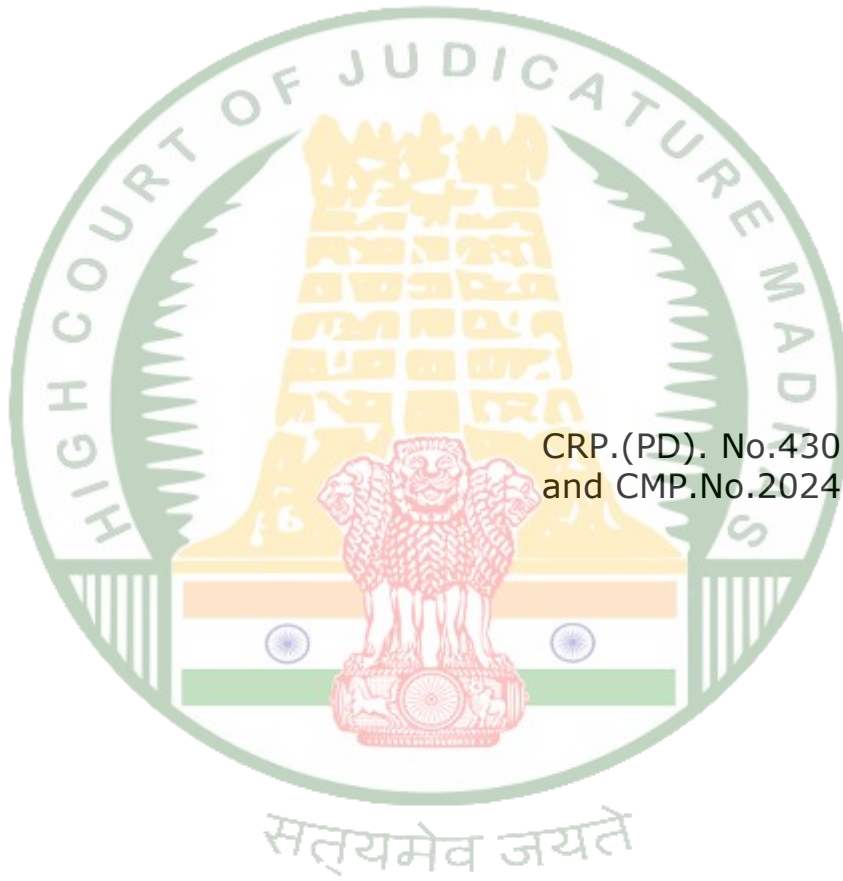
XV Assistant Judge,
City Civil Court,
Chennai.



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D.KRISHNAKUMAR.J,

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