

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**Review Application No.115 of 2017
in
CRP(PD).No.2718 of 2012**

T.Kanthasamy

..

Petitioner

Vs.

V.Periyathambi

..

Respondent

Prayer: Review Application filed under Order XLVII Rule 1 r/w Section 114 of C.P.C., against the order passed in CRP(PD)No.2718 of 2012 dated 04.01.2017 by this Court.

सत्यमेव जयते
ORDER

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This Review Application filed against the order passed in CRP(PD) No.2718 of 2012, dated 04.01.2017, in which dismissing the Civil Revision Petition by this Court.

2.It is the case of the petitioner is that on the date of hearing on 04.01.2017, this Court is allowed the Civil Revision Petition, but the copy of the order states that the Civil Revision Petition is dismissed.

3.The original case in the Civil Revision Petition is that the respondent/plaintiff seeks appointment of Advocate Commissioner by way of filing I.A.No.350 of 2012, which was allowed by the learned District Munsif, Omalur and challenging the said order, this petitioner/defendant has filed the Civil Revision Petition in CRP(PD)No.2718 of 2012.

4.It is admitted fact that I have already considered the appointment of the Advocate Commissioner in various cases that the Advocate Commissioner can be appointed in the suits filed for bare injunction, but in this case, the respondent/plaintiff has filed I.A.No.350 of 2012 in O.S.No.65 of 2010 seeking for the appointment of the Advocate Commissioner and to make local inspection of the suit properties for the purpose of identification of the suit properties and note down the physical features thereof with the assistance of Village Administrative Officer and the Firkha Surveyor with reference to the Revenue records and file a report with necessary plan drawn to scale.

5. That was objected by this petitioner, who is the respondent/defendant therein, on the ground that the plaintiff is in possession of the properties and the same is relied upon in the petition is not admissible. Considering the nature of the case, the learned District Munsif, Omalur has appointed the Advocate Commissioner on the ground that already the plaintiff has filed I.A.No.185 of 2010 for injunction and after due enquiry the said application was allowed by order dated 16.12.2010 and there is no appeal against the said order and therefore, the plaintiff is entitled for the appointment of Advocate Commissioner. Challenging the said order, this petitioner who is the defendant in the suit has filed the Civil Revision Petition in CRP(PD)No. 2718 of 2012.

6. Though I have considered the appointment of Advocate Commissioner in several cases, even in the suit for bare injunction, but in this case, this respondent/plaintiff who wants to identify the suit properties though the Advocate Commissioner on local inspection, which could not be entertained.

7. Even in the suit for injunction, the appointment of Advocate

Commissioner can be appointed for local inspection and filing report for speedy disposal of the suit in a proper manner the Commissioner can be appointed, but the case in hand, he sought for only to appoint the Advocate Commissioner for the purpose of identification of the suit properties. Therefore, on the said date on 04.01.2017, I considered and pass orders by allowing the Civil Revision Petition by setting aside the order in I.A.No.350 of 2012, but at the time of issuance of the copy of the order in Civil Revision Petition it is mentioned that the Civil Revision Petition has been dismissed.

8.It is the case of the petitioner is that the order in Civil Revision Petition was passed in the open Court by allowing the Civil Revision Petition, but when he received the copy of the order, he found that the Civil Revision Petition was dismissed. Therefore, he filed the present Review Petition to review the order.

9.Notice was given to the respondent's counsel and on perusal of the order it is made clear that the learned counsel agreed that on the date of order on 04.01.2017, this Court was allowed the Civil Revision Petition, but it is wrongly issued the order by mentioning the Civil Revision Petition was dismissed, since the appointment of Advocate

Commissioner, the respondent/plaintiff has not filed or not giving any details for what purpose the appointment of Advocate Commissioner can be appointed except the petition mentioned that only to local inspection by the Advocate Commissioner for the purpose of identification of the suit properties, but that cannot be permitted in the eye of law.

10.The learned District Munsif has miserably failed to give valid reason except that the respondent/plaintiff has already obtained the order of interim injunction which cannot be make it as a ground. Therefore, the order of the learned District Munsif in I.A.No.350 of 2012 in O.S.No.65 of 2010 is set aside and hence, the order in CRP(PD)No.2718 of 2012, dated 04.01.2017 is liable to be Reviewed.

11.In the result:

(a) this Review Petition is allowed by setting aside the order passed in CRP(PD)No.2718 of 2012, dated 04.01.2017;

(b) the I.A.No.350 of 2012 in O.S.No.65 of 2010, dated 30.04.2012, on the file of the learned District Munsif Court, Omalur, is set aside.

(c) the learned District Munsif, Omalur, is directed to dispose of the suit within a period of three months from the date of receipt of a copy of the order. No costs.

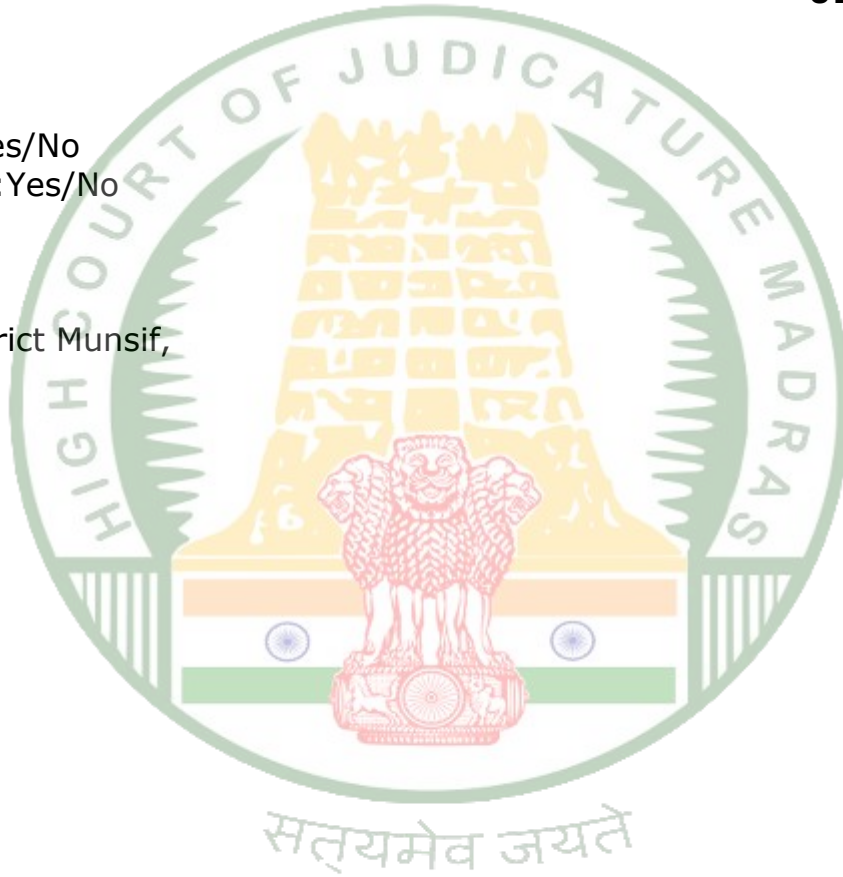
01.09.2017

vs

Index:Yes/No
Internet:Yes/No

To

The District Munsif,
Omalur.



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M.V.MURALIDARAN,J.

VS



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