

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4335 of 2011
& M.P.No.1 of 2011

Ayyavoo

.. Petitioner

Vs.

1. Venkatammal
2. Ravichandran
3. Rathinam
4. Shanthi

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 15.06.2011 made in I.A.No.385 of 2005 in I.A.No.122 of 2005 in O.S.No.40 of 2005 on the file of the District Munsif Court, Attur.

For Petitioner : Ms.Zeenath Begam

for Mr.T.Murugamanickam

For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 15.06.2011 made in I.A.No.385 of 2005 in

I.A.No.122 of 2005 in O.S.No.40 of 2005 on the file of the District Munsif Court, Attur.

2. The petitioner is the plaintiff and the respondents are the defendants in O.S.No.40 of 2005. The petitioner filed the suit for permanent injunction against the respondents. The suit property being a lane in Survey No.616/3 shown in the sketch absolutely belongs to the petitioner. The respondents are claiming right to let out the sewerage pipe line in the suit property belonging to the petitioner stating that it is a common pathway. Hence, he filed the suit. Along with the suit, the petitioner filed I.A.No.122 of 2005 for temporary injunction restraining the respondents from laying down any sewerage pipe line in the suit property belonging to the petitioner.

3. The petitioner also filed another I.A.No.385 of 2005 in I.A.No.122 of 2005 for appointment of an Advocate Commissioner to measure the suit lane with the help of a Surveyor and revenue records. According to him, appointment of Advocate Commissioner is necessary to decide the issue in the suit.

4. The respondents filed counter affidavit opposing the said application on the ground that the suit lane in Survey No.616/3 is a common lane and due to necessity, the respondents have to lay the sewerage pipe line in the side of their land to discharge the sewerage. The petitioner has to prove his case by relying on documents and cannot collect evidence through the Advocate Commissioner to prove his case and cannot seek measurement of the entire property.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and the relief sought for in the suit, dismissed the application holding that the parties must prove their case through documents only and appointment of Advocate Commissioner is not necessary.

6. Against the order of dismissal dated 15.06.2011 made in I.A.No.385 of 2005 in I.A.No.122 of 2005, the present civil revision petition is filed by the petitioner.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. It is well settled that in the suit for injunction, Advocate Commissioner cannot be appointed to collect evidence to prove their possession. The parties have to prove their possession by letting in evidence.

9. The learned Judge has considered all the aspects in proper perspective and dismissed the application by giving cogent and valid reasons. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 15.06.2011.

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

Index : Yes/No

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03.07.2017

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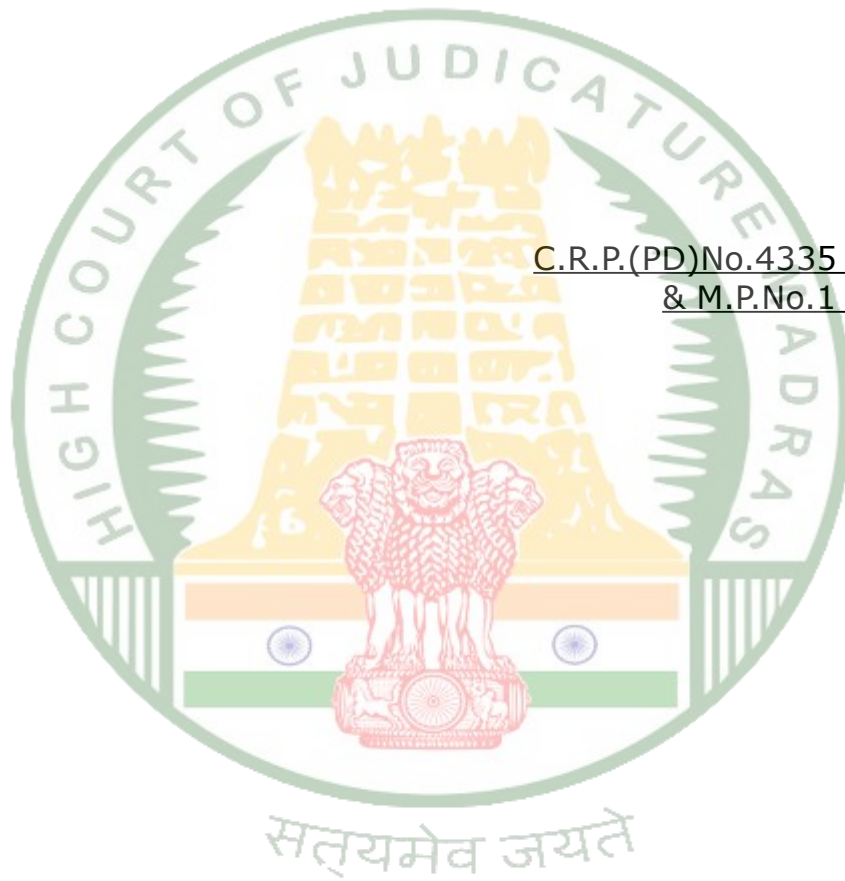
The District Munsif Court
Attur



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V.M.VELUMANI, J.

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