

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4380 of 2011
& M.P.No.1 of 2011

Angamuthu

.. Petitioner

Vs.

Subramaniam

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set-aside the petition and docket order dated 20.12.2010, made in I.A.No.1116/2009 in O.S.No.2374 of 2012, on the file of I Additional District Munsif Court, Coimbatore and extend time for the visit of the Advocate Commissioner and filing of a report.

(Prayer is amended vide order of Court dated 17.10.2014 made in M.P.No.1 of 2014 in C.R.P.No.4380 of 2011)

For Petitioner

: Mr.P.M.Duraiswamy

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ORDER

This Civil Revision Petition has been filed against the order dated 20.12.2010, made in I.A.No.1116/2009 in O.S.No.2374 of 2012, on the file of I Additional District Munsif Court, Coimbatore.

2. When the matter is taken up for hearing, the learned counsel appearing for the petitioner submitted that the suit in O.S.No.115 of 2007 on the file of District Munsif Court, Palladam has been transferred to I Additional District Munsif Court, Coimbatore and renumbered as O.S.No.2374 of 2012 and further transferred to District Munsif Court, Sulur and renumbered as O.S.No.340 of 2017.

3. The petitioner is the plaintiff and the respondent is the defendant in O.S.No.115 of 2007. The petitioner filed the said suit for permanent injunction and filed I.A.No.1116 of 2009, for appointment of Advocate Commissioner to measure the suit property with the assistance of Taluk surveyor and file his report with plan. By order dated 25.01.2010, the said application was allowed and an Advocate Commissioner was appointed.

4. On 22.11.2010, the petitioner filed a memo stating that Taluk surveyor has been transferred. The learned Judge received the memo and directed the petitioner to take steps and given time till 20.12.2010 for filing report. On 20.12.2010, again the petitioner filed a memo for extension of time. The learned Judge held that already sufficient time had been given to the petitioner to take steps and except filing memo for extension of time, no steps have been taken and closed the application. Against that, the present Civil Revision Petition is filed.

5. Heard the learned counsel for the petitioners and perused the materials available on record.

6. From the records, it is seen that the petitioner filed suit for permanent injunction against the respondent in the year 2007. In the said suit, on its application, Advocate Commissioner was appointed on 25.01.2010. For more than eleven months, the petitioner had not taken any steps to get the assistance of the Taluk Surveyor. The learned Judge, taking note of the fact that the failure on the part of the petitioner to take steps to get assistance of the Taluk Surveyor, closed the application on

20.12.2010.

7. From the materials available on record, it is seen that the petitioner has stated that the Taluk Surveyor is not available to assist the Advocate Commissioner to measure the property and he has been transferred and sought for extension of time and he has filed memos to that effect.

8. Considering the fact that the petitioner could not take steps due to non-availability of the Taluk surveyor, the impugned order of the learned Judge is hereby set aside and I.A.No.1116 of 2009 is restored to file and the petitioner is directed to take steps within two weeks from the next date of hearing. The learned District Munsif, Sulur is directed to proceed with the application from that stage.

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

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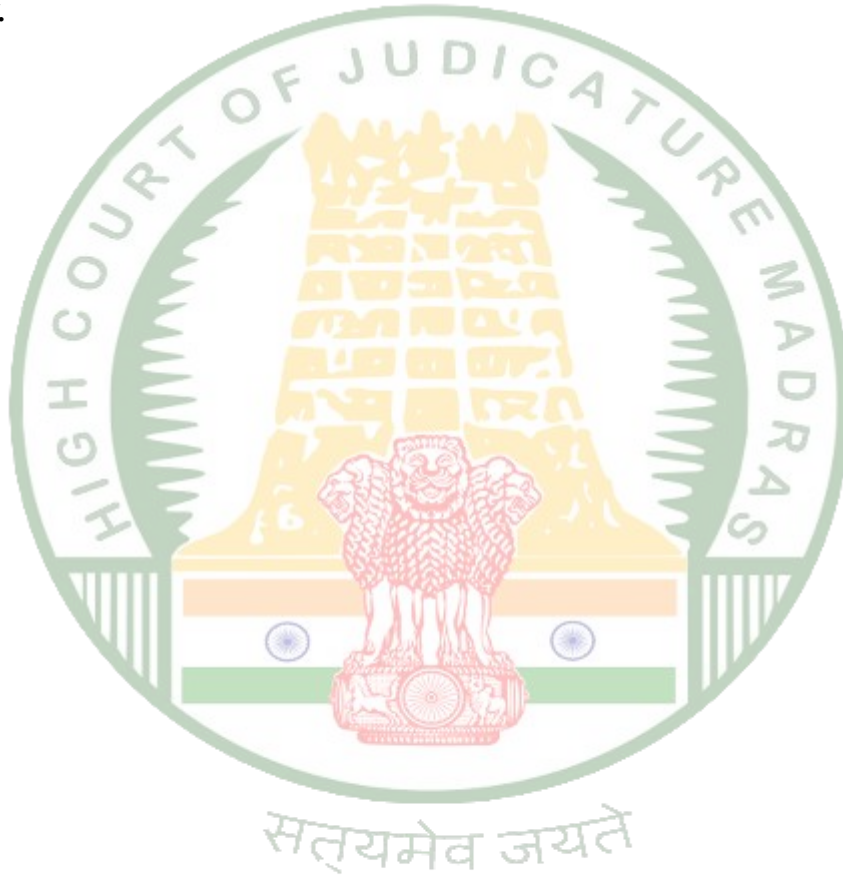
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Note: Issue order copy by 28.06.2017.

To

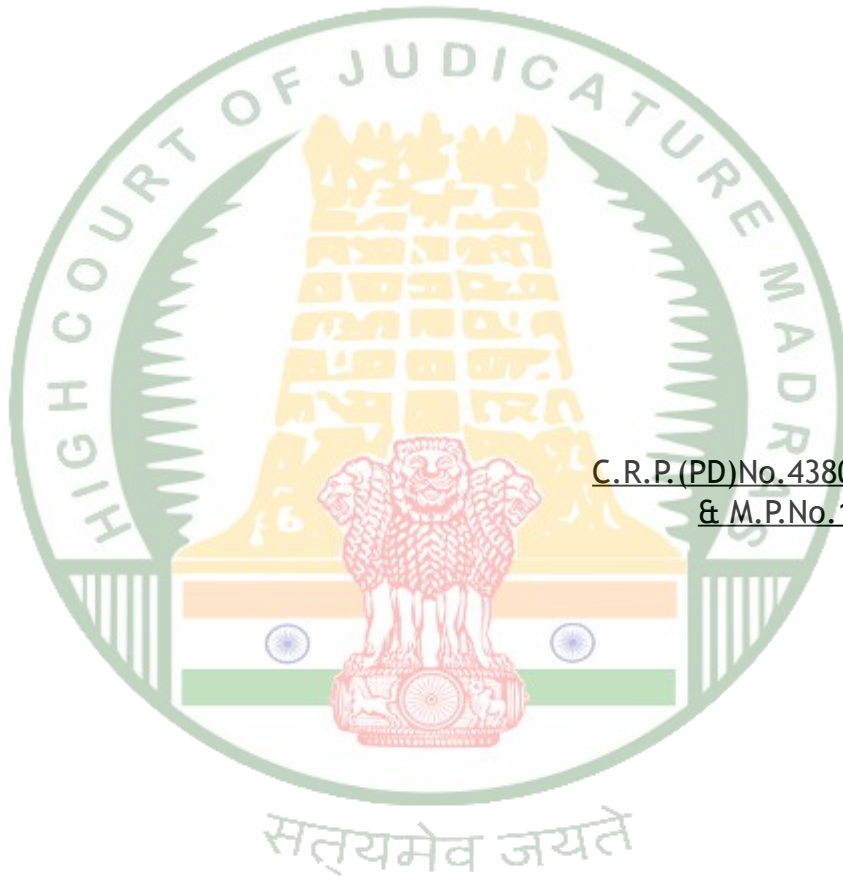
The District Munsif Court,
Sulur.



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V.M.VELUMANI, J.

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