

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.483 of 2015
& M.P.No.1 of 2015

Vijayalakshmi

.. Petitioner

Vs.

Selvambal

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 03.12.2014 made in I.A.No.441 of 2013 in O.S.No.473 of 2013 on the file of the II Additional Sub Judge, Salem.

For Petitioner : Mr.R.Nalliyappan

For Respondent : No appearance

ORDER

This Civil Revision Petition is filed against the order dated 03.12.2014 made in I.A.No.441 of 2013 in O.S.No.473 of 2013 on the file of the II Additional Sub Judge, Salem.

2.The petitioner is the plaintiff and respondent is the defendant in O.S.No.473 of 2013 on the file of the II Additional Sub Judge, Salem. The petitioner filed the said suit against the respondent for declaration of her title and mandatory injunction directing the respondent to remove the construction put up in the suit property and handover the possession of the property. According to the petitioner, the suit property is a Government Porampokku land. The patta has been granted to her father Mohanavel by Special Tahsildar. Her father was in possession and enjoyment of the property till his death. He executed a settlement deed bearing document No.3026/2013 on 12.08.2013 in favour of the petitioner. The respondent is adjacent land owner. She has encroached a portion of the suit property and tried to put up construction in the month of August, 2013. The petitioner's father has given petition before the Executive Officer, Omalur Panchayat. The Executive Officer did not take any steps. Again on 30.08.2013, the respondent along with her men came to the petition property and put up the construction in the suit property. The same was prevented by the petitioner with great difficulty. The construction put up by the respondent has to be removed and hence she has filed the suit for declaration and mandatory injunction. The

petitioner has also filed an application in I.A.No.441 of 2013 for appointment of an Advocate Commissioner to visit the petition mentioned property; note down the construction in the petition mentioned property and file his report with plan drawn to scale.

3.The respondent filed counter affidavit and denied all the averments. According to the respondent, the suit property originally belonged to her mother, Kandhai Ammal. She purchased the suit property by the deed of sale dated 07.05.1939. She settled the suit property on the respondent by settlement deed dated 26.08.1989. The petitioner's father is son in law of respondent's brother. The petitioner and her brother are not residing in the suit property. The respondent is constructing only in her property and prayed for dismissal of the application.

4.The learned Judge, considering the averments in the affidavit, counter affidavit, materials available on record, dismissed the application.

5.Against the said order dated 03.12.2014 made in I.A.No.441 of 2013 in O.S.No.473 of 2013, the petitioner has filed the present Civil Revision Petition.

6. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice is served on the respondent and her name is printed in the cause list, there is no representation either in person or through counsel.

7. From the materials available on record, it is seen that the petitioner filed suit for declaration and mandatory injunction. Both the petitioner and respondent are claiming title for the suit property. It is an admitted fact that the petitioner is seeking declaration of title and mandatory injunction to remove the construction put up by the respondent in the suit property. According to the respondent, she has put up construction in her property. In the circumstances, it is for the petitioner to prove her title over the suit property by letting in acceptable evidence. Once the petitioner proves her title, she will be entitled to consequential relief of mandatory injunction. For the above reasons, the application filed by the petitioner for appointment of Advocate Commissioner is not maintainable. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 03.12.2014 made in I.A.No.441 of 2013 in O.S.No.473 of 2013.

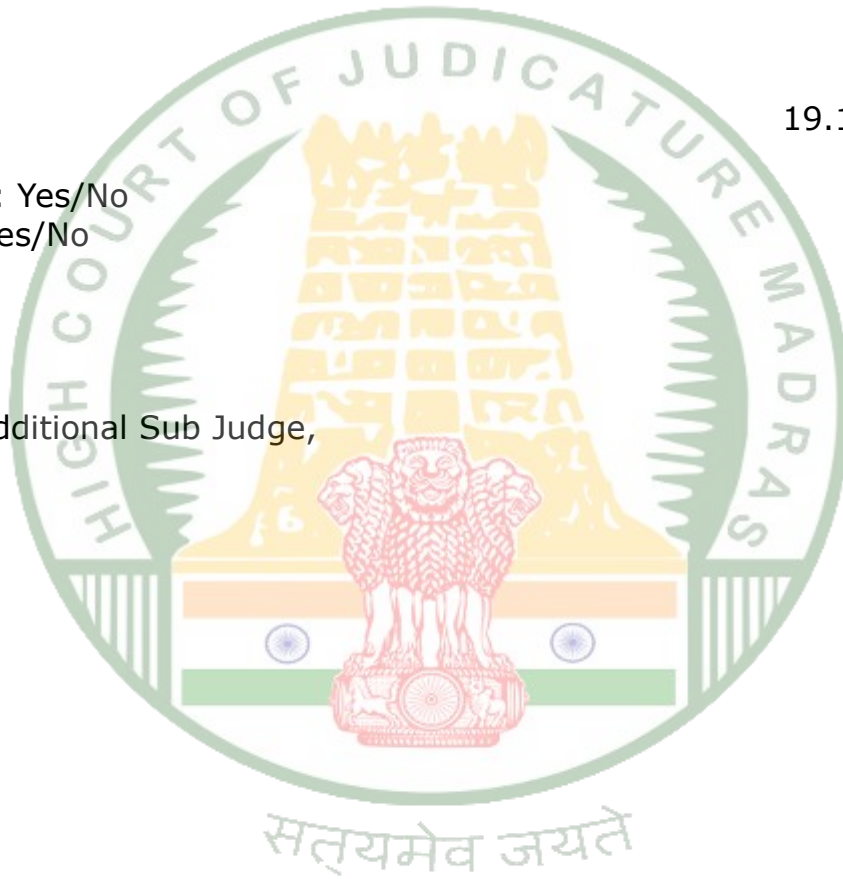
8.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

19.12.2017

Internet: Yes/No
Index: Yes/No
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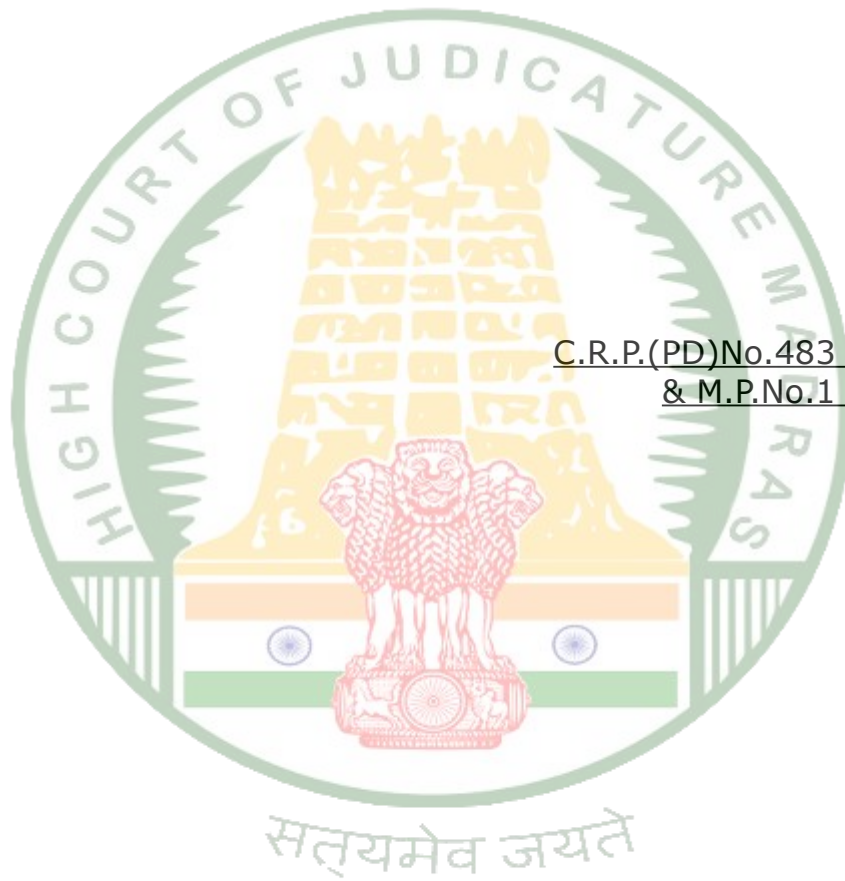
The II Additional Sub Judge,
Salem.



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V.M.VELUMANI, J.

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