

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.506 of 2015
& M.P.No.1 of 2015

P.Sriramalu

.. Petitioner

Vs.

A.Pichandi

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order passed by the learned District Munsif, Vellore in I.A.No.290 of 2014 in O.S.No.378 of 2010 dated 01.07.2014.

For Petitioner : M/s.Uma Maheswari

For Respondent : Mr.P.Sankaranarayanan

ORDER

This Civil Revision Petition has been filed against the fair and decretal order passed by the learned District Munsif, Vellore in I.A.No.290 of 2014 in O.S.No.378 of 2010 dated 01.07.2014.

2.The petitioner is the defendant and respondent is the plaintiff in O.S.No.378 of 2010 on the file of the District Munsif, Vellore. The respondent filed the said suit against the petitioner for

permanent injunction restraining the petitioner from interfering in any manner with the respondent's peaceful possession and enjoyment of the suit schedule property. The petitioner filed written statement and is contesting the suit. The petitioner filed I.A.No.290 of 2014 to appoint an Advocate Commissioner to inspect the petition mentioned property along with the property of the petitioner with the relevant documents and measure the same with the help of Town Surveyor and submit his report with necessary plan. According to the petitioner, in I.A.No.739 of 2013 filed by the respondent, the Advocate Commissioner was appointed and he measured the property of the respondent alone and filed his report. He did not measure the property of the petitioner. The dispute is with regard to the wall and it is necessary to measure the petitioner's property also.

3.The respondent filed counter affidavit and submitted that trial commenced. The respondent let in evidence through PW1. The Advocate Commissioner was examined as PW2 and his report and plan were marked as Exhibits C1 and C2. The petitioner cross examined the Advocate Commissioner and in view of these facts, the present application is not maintainable and prayed for dismissal of the application.

4.The learned Judge, considering the averments in the affidavit, counter affidavit, the judgments relied on by the parties and the fact that Advocate Commissioner was examined and cross examined by the counsel for the petitioner and report and plan were marked as Exs.C1 and C2, dismissed the application.

5.Against the said order of dismissal dated 01.07.2014 made in I.A.No.290 of 2014 in O.S.No.378 of 2010, the petitioner has come out with the present Civil Revision Petition.

6.Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

7.From the materials on record, it is seen that the suit is for permanent injunction. An Advocate Commissioner was appointed in I.A.No.739 of 2013. He inspected the property and filed report on 26.11.2013. The petitioner is seeking appointment of another Advocate Commissioner to measure the property. From the impugned order, it is seen that Advocate Commissioner was examined as PW2 and cross examined by the counsel for the petitioner. The report and plan filed by the Advocate Commissioner were marked as Exs.C1 and C2. It is also seen from the impugned

order that at the time of arguments in the I.A.No.290 of 2014, the petitioner sought for reissue of warrant of commission to the same Commissioner. The suit is for permanent injunction. According to the petitioner, it is the respondent who encroached the property of the petitioner and put up the wall. In view of the relief sought for in the suit, it is for the petitioner and respondent to prove their respective case by letting in acceptable evidence. The Advocate Commissioner's report is only to assist the Court to decide the issue on merits and the Court may accept or reject the report of Advocate Commissioner based on the evidence let in by the parties. The parties cannot collect the evidence through Advocate Commissioner. For the above reason, the Civil Revision Petition is liable to be dismissed and there is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 01.07.2014, made in I.A.No.290 of 2014 in O.S.No.378 of 2010.

8. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

19.12.2017

Internet: Yes/No

Index: Yes/No

gsa

To

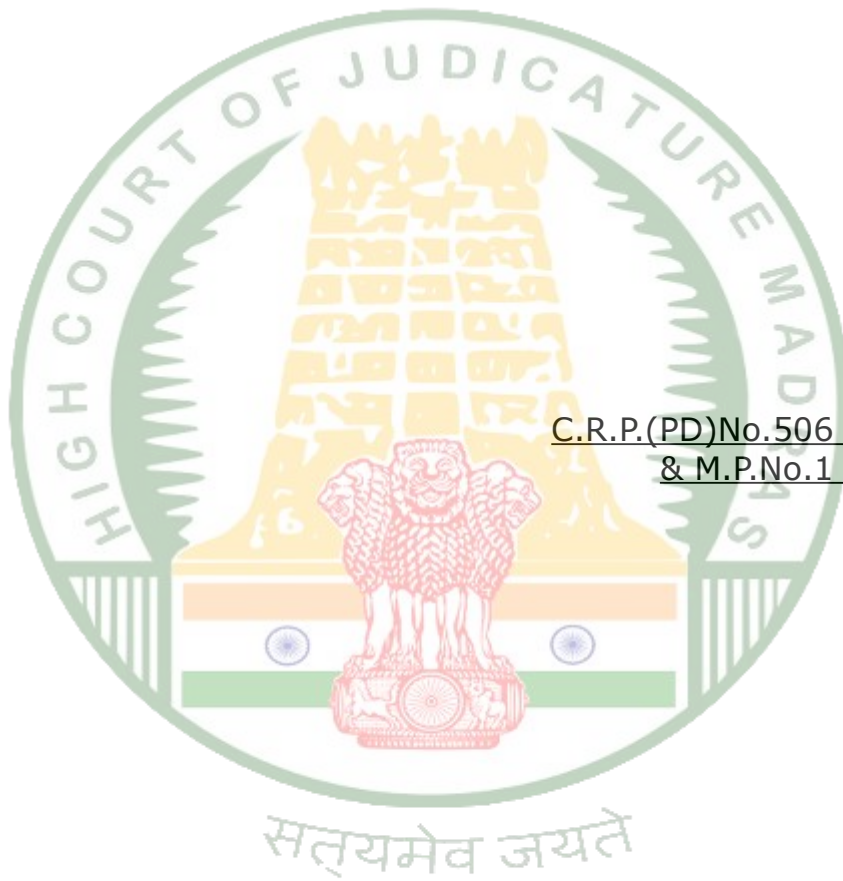
The District Munsif,
Vellore



WEB COPY

V.M.VELUMANI, J.

gsa



C.R.P.(PD)No.506 of 2015
& M.P.No.1 of 2015

WEB COPY

19.12.2017