

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2946 of 2010
& M.P.No.1 of 2010

Krishnagopal

.. Petitioner

Vs.

A.Sirajunniasa

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 14.06.2010 made in I.A.No.2609 of 2007 in O.S.No.47 of 2002 on the file of the District Munsif Court, Tiruvallur.

For Petitioner : Mr.T.S.Charles

For Respondent : Mr.N.K.Sriraman

ORDER

The Civil Revision Petition is filed against the order dated 14.06.2010 made in I.A.No.2609 of 2007 in O.S.No.47 of 2002 on the file of the District Munsif Court, Tiruvallur.

2. The petitioner is the defendant and respondent is the plaintiff in O.S.No.47 of 2002 on the file of the District Munsif Court, Tiruvallur. The respondent filed the said suit for declaration that suit item 3 is common pathway to reach the street from suit item 1 and for permanent injunction restraining the petitioner from putting up any construction in suit item 3 of the suit schedule property. The respondent also filed an application for interim injunction and interim injunction was granted. The petitioner filed written statement on 17.03.2003 and is contesting the suit. When the suit was ripe for trial, the respondent filed I.A.No.2609 of 2007 for amendment of the plaint to include the relief of mandatory injunction.

3. According to the respondent, in spite of the order of interim injunction, the petitioner has put up construction with lintel top over suit item 3 and therefore, he has prayed for amendment to include the relief of mandatory injunction.

4. The petitioner filed counter affidavit and opposed the said application and denied that he encroached 3rd item of the suit property.

5. The learned Judge considering all the averments made in the affidavit, counter affidavit and rival contentions, held that the question of controversy between the petitioner and respondent can be determined only at the time of trial by appreciating the evidence and in view of the report of the Advocate Commissioner, allowed the application.

6. Against the said order dated 14.06.2010 made in I.A.No.2609 of 2007, the present Civil Revision Petition is filed by the petitioner/defendant.

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

8. From the materials available on record, it is seen that the Advocate Commissioner was appointed in the application filed by the respondent and he has filed his report after inspection of the suit property. The learned Judge, considering the report of the Advocate Commissioner that projection of the lintel level at 12 feet high from the floor over item 3 and item 3 is a common pathway, allowed the application. The learned Judge has considered all the above facts

and has given valid reason for allowing the application. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 14.06.2010.

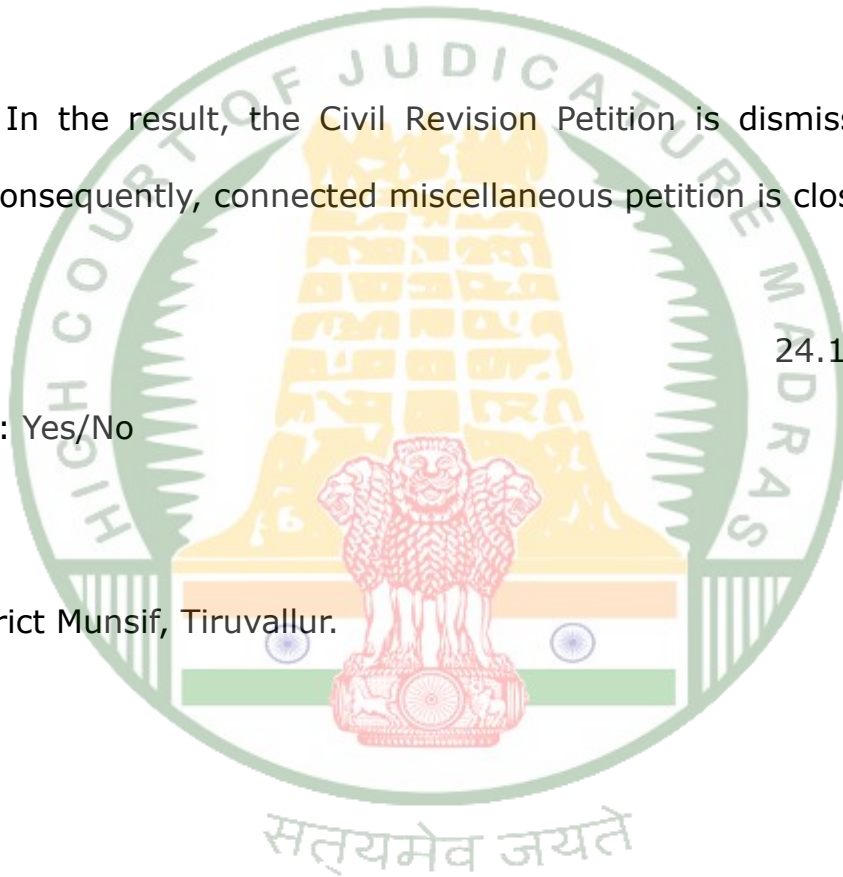
9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

24.11.2017

Index : Yes/No
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To

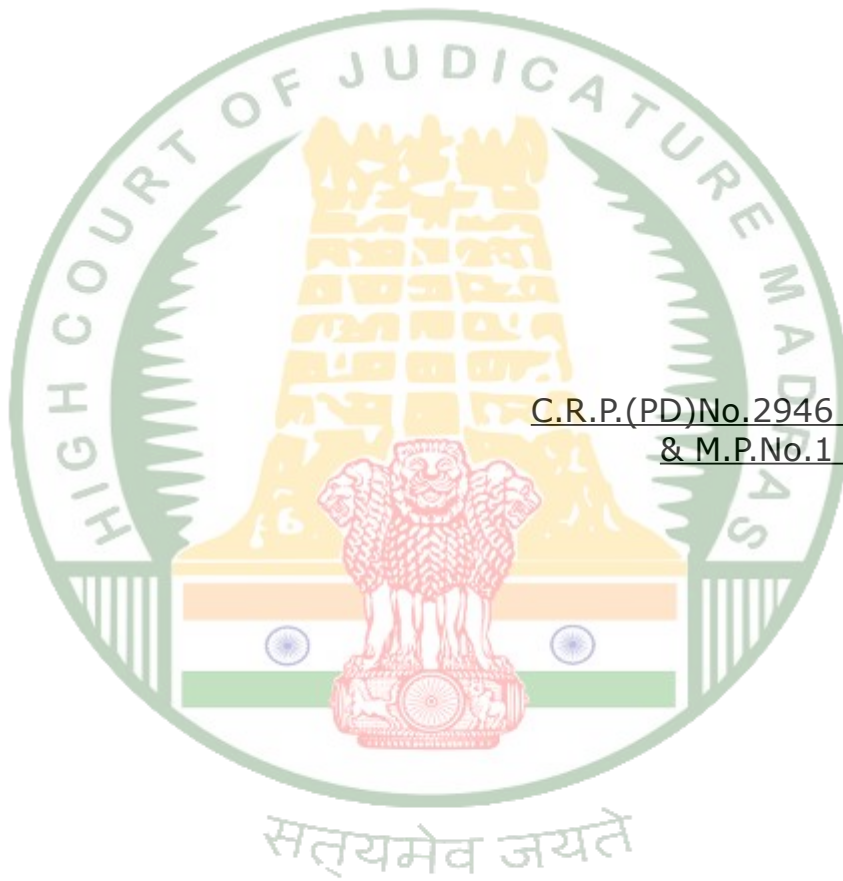
The District Munsif, Tiruvallur.



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V.M.VELUMANI, J.

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