

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.306 of 2009
& C.M.P.No.1 of 2009

Damodarane @ Damodaran ... Petitioner

Vs.

1.Sri Muthurenga Chetty Anna Chathiram,
Rep. by its Administrator, Govindarajulu,
S/o. Jeyaram,
Office at No.3, Mahatma Gandhi Road,
Muthialpet,
Pondicherry - 605 003.

2.Natesan .. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India, against the fair and Decretal Order dated
10.12.2007 made in I.A.No.2963/2006 in O.S.No.823 of 2006 on
the file of the III Additional District Munsiff, Puducherry.

For Petitioner : Mr.K.Gunasekaran

For Respondents : Not ready in notice (R1)
No appearance for R2

ORDER

This civil revision petition has been filed against the fair and Decretal Order dated 10.12.2007 made in I.A.No.2963/2006 in O.S.No.823 of 2006 on the file of the III Additional District Munsiff, Puducherry.

2. The petitioner is the plaintiff and the respondents are defendants in O.S.No.823 of 2006 on the file of the III Additional District Munsiff, Puducherry. The petitioner filed the above suit for permanent injunction restraining the respondents 1 & 2 from disturbing or interfering with his lawful lease-hold possession and enjoyment of property as described in schedule to plaint until he is evicted by due process of law. Pending suit, first respondent filed I.A.No.2963 of 2006 under Order XXVI, Rule 9 of C.P.C. to appoint an Advocate Commissioner to inspect the suit property to note down the physical features and boundaries of the suit property and file the report along with the plan.

3. According to the first respondent, the suit property is bare land and uncultivable. Debris are dumped in the said land and around the said land are residential buildings. The said land was

not cultivated for decades. The contention for the learned counsel for the petitioner that he is a cultivating tenant is not correct. In such circumstances appointment of Advocate Commissioner to inspect the suit property and to note down the physical features is necessary. The petitioner filed counter and opposed the said application on the ground that the originally his father was the lessee and after his death, the petitioner has become the lessee. The suit filed by the petitioner is for bare injunction and it is for the petitioner to prove his possession for injunction.

4. The learned Judge, considering the rival contention that the petitioner claiming to be a cultivating tenant, while the first respondent is disputing the same, appointed an Advocate Commissioner, in the interest of justice.

5. Against the said order dated 10.12.2007 made in I.A.No.2963 of 2006 in O.S.No.823 of 2006, the present Civil Revision Petition is filed.

6. From the materials on record, It is seen that the in the suit, the petitioner is seeking the relief of injunction on the ground

that he is a cultivating tenant and not to evict him, expect by due process of law. On the other hand, the case of the first respondent is that the said land is not cultivated for decades and it is used as dumping ground. In view of the rival contention, to decide the issue, the report of the Advocate Commissioner is necessary. The learned Judge has considered all the rival contentions and passed the order. Therefore, there is no error in the order impugned in this revision warranting interference by this Court.

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

28.08.2017

klt/rgr
Index: Yes/No

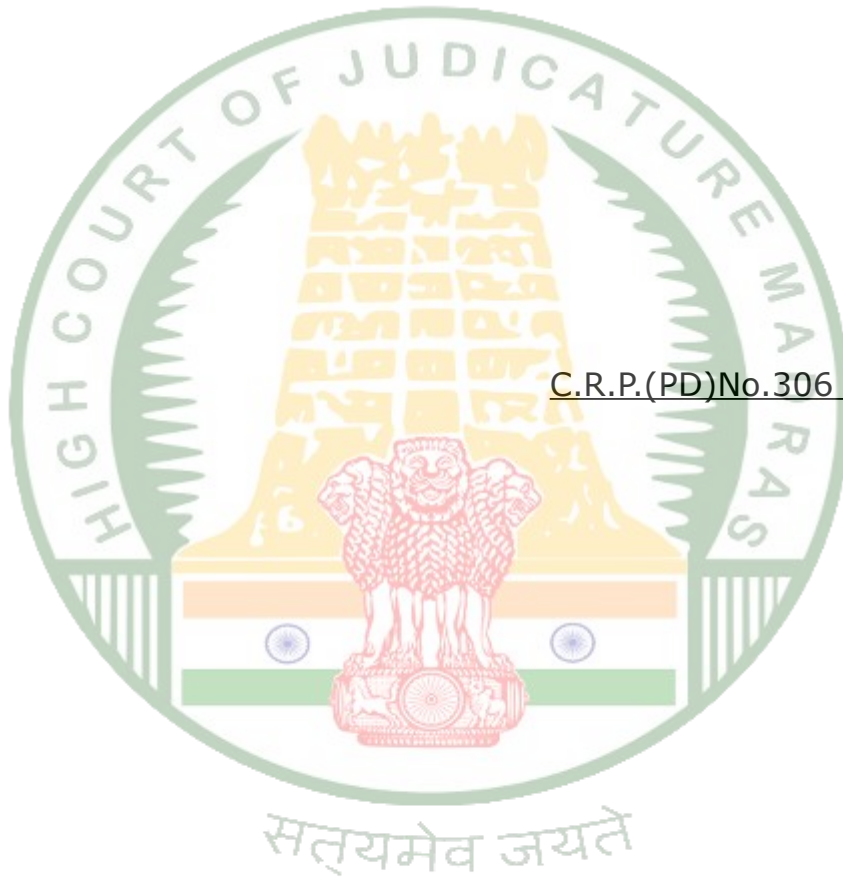
To

The III Additional District Munsiff,
Puducherry.

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V.M.VELUMANI, J.

klt/rgr



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