

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.No.2404 of 2012

Noorjahan

.. Petitioner

Vs.

K.Senthamarai

.. Respondent

PRAYER: Civil Revision Petition filed Under Article 227 of the Constitution of India against the fair and decreetal order dated 22.08.2011 made in I.A.No.1016 of 2010 in O.S.No.35 of 2003 on the file of the District Munsif, Chengalpattu.

For Petitioner : Mr.Subramanian

For Respondent : Mr.V.Raghavachari

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 22.08.2011 made in I.A.No.1016 of 2010 in O.S.No.35 of 2003 on the file of the District Munsif, Chengalpattu.

2. The petitioner is defendant, respondent is plaintiff in

O.S.No.35 of 2003 on the file of the District Munsif, Chengalpattu. The respondent filed suit for declaration, mandatory and permanent injunction against the petitioner. The petitioner filed written statement on 13.02.2004 and is contesting the suit.

3. In the year 2010, the petitioner filed I.A.No.1016 of 2010 for issue of witness summons to an Advocate Commissioner Thiru.C.Kumar, Advocate, Thirukalukunram appointed in O.S.No.726 of 1994 on the file of the same Court to give evidence and mark the report of the Advocate Commissioner dated 09.12.1994 together with the plan, rough sketch and Adangal of 'B' Schedule property filed as Exs.C.1 to C.3 in O.S.No.726 of 1994.

4. According to the petitioner, the Advocate Commissioner in O.S.No.726 of 1994 inspected the suit property and have filed two reports. Therefore, the evidence of the said Advocate Commissioner is necessary to decide the issue in the present suit.

5. The respondent filed counter and opposed the said application on the ground that the suit in O.S.No.726 of 1994 for declaration of the 'B' Schedule property, was dismissed after contest and the application to condone the delay in filing the appeal was

also dismissed. In view of the dismissal of O.S.No.726 of 1994 and the application filed under Section 5 of the Limitation Act to condone the delay in filing the first appeal against the said judgment, the petitioner is not entitled to examine the Advocate Commissioner appointed in the other suit.

6. The learned Judge considering the fact that the suit in O.S.No.726 of 1994 filed by the petitioner and the application filed under Section 5 of the Limitation Act to file condone delay in filing the appeal were dismissed and since the petitioner had suppressed these facts in the affidavit, dismissed the present application.

7. Against the said order dated 22.08.2011, made in I.A.No.1016 of 2010 in O.S.No.35 of 2003, the present civil revision petition is filed by the petitioner.

8. Heard the learned counsels appearing for both parties and perused the materials on record.

9. The petitioner is seeking for a direction to issue summons for examination of Advocate Commissioner appointed in O.S.No.726 of 1994, who inspected the 'B' Schedule property and filed his

report. The petitioner has not stated in the affidavit that the said suit was dismissed already and the application filed to condone the delay in filing the appeal also was dismissed. The learned Judge, considering this fact, dismissed the present I.A. In view of the fact that the earlier suit filed by the petitioner in which Advocate Commissioner was appointed and filed report, was dismissed and such dismissal has become final, the petitioner is not entitled to examine the Advocate Commissioner appointed in other suit. Therefore, there is no error in the order passed by the learned Judge warranting interference by this Court and the civil revision petition is liable to be dismissed.

10. Accordingly, the civil revision petition is dismissed. No costs.

20.07.2017

Index : Yes/No

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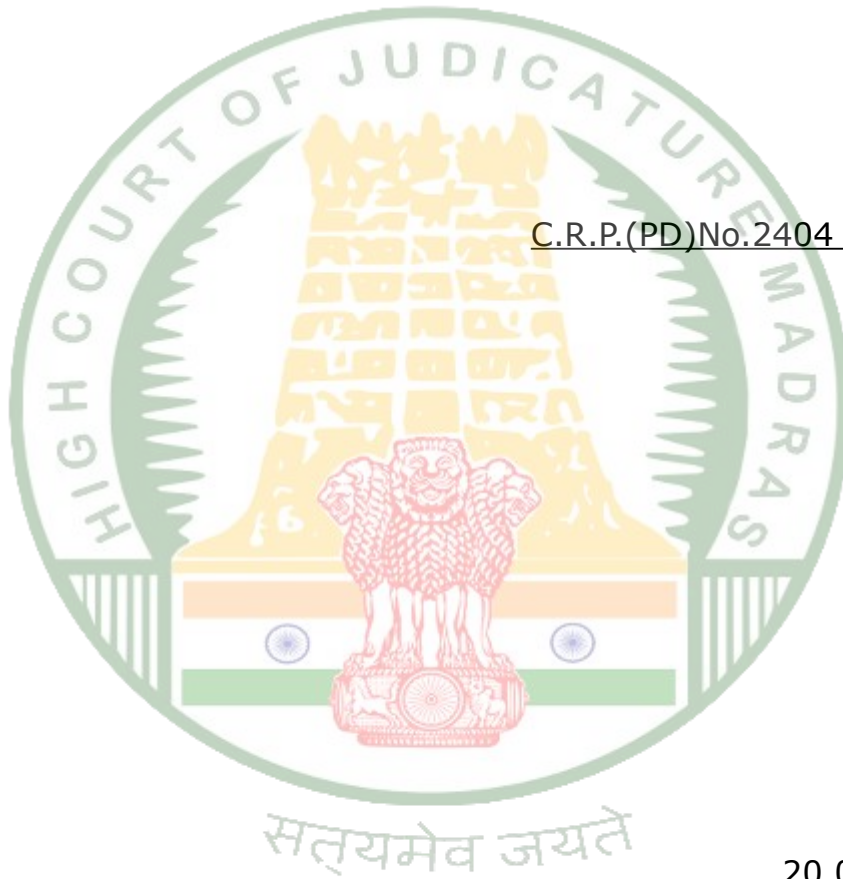
To

The District Munsif, Chengalpattu.

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V.M.VELUMANI, J.

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