

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)No.3453 of 2013

and

M.P.No.1 of 2013

Karupaiah Nadar

...

Petitioner

Vs

Kasimani

...

Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and final order of the District Munsif Court, Sirkali, dated 30.07.2013 made in I.A.No.421 of 2013 in O.S.No.133 of 2008.

For Petitioner : Mr.S.Sounthar

For Respondent : Mr.A.Muthukumar

WEB ORDER COPY

That the instant Civil Revision Petition is filed as against the order of dismissal made in I.A.No.421 of 2013 in O.S.No.133 of 2008 dated 30.07.2013 on the file of the learned District Munsif Court,

Sirkali.

2.I heard Mr.S.Sounthar, learned counsel appearing for the petitioner and Mr.A.Muthukumar, learned counsel appearing for the respondent and perused the entire materials available on record.

3.The careful scrutiny of the impugned order would disclose that in a suit filed by the respondent herein for recovery of possession in respect of "B" schedule property against the revision petitioner in O.S.No.133 of 2008, the petitioner herein filed an application under Order 14 Rule 5 of CPC in I.A.No.421 of 2013 to frame additional issues of Easementary right of the defendant over the suit property.

4.According to the revision petitioner, he is having right to drain rain water and to have access to carry out repairs etc, as easement of necessity over the suit property and in fact in respect of easementary right he has pleaded in para 3 of his written statement. Despite that the trial Court failed to frame any issue in respect of easementary right. Hence the defendant has filed the above application to frame an additional issue which reads as follows:

“Whether the defendant is entitled to the

easementary right over the suit property to drain rainwater to have access to carry out repairs etc.,?”

5.The trial Court upon considering the arguments advanced on either side dismissed the said application holding that the defendant /revision petitioner had not sought for any counter claim in respect of his claim for easementary right, is not legally sustainable in the considered opinion of this Court.

6.There is a specific duty cast upon the trial Court to frame appropriate issues when there is a specific pleading in respect of the dispute over the suit property. The pleading includes the averments contained in the plaint and written statement.

7.At this juncture it is useful to refer Order 6 Rule 1, CPC which reads as follows:

“Order 6 Rule 1 of CPC - Pleading shall mean plaint or written statement”.

8.Therefore the trial Court ought to have considered the pleadings available in the plaint as well as in the written statement and

should have framed the necessary and proper issues.

9. In the case on hand, as stated above in the written statement in para 3 filed by the revision petitioner, he has categorically stated that he is having easementary right over the suit property and hence the trial Court ought to have framed issue relating to the easementary right of the defendant.

10. In view of the discussion made above, this Court is of the considered opinion that the order of the trial Court suffers material irregularity and the same is also not legally sustainable, hence it is liable to be set aside.

11. Accordingly the impugned order of trial Court is liable to be set aside and the Civil Revision Petition is liable to be allowed.

12. In the result:

a) this Civil Revision Petition is allowed, by setting aside the order passed in I.A.No.421 of 2013 in O.S.No.133 of 2008 dated 30.07.2013 on the file of the District Munsif Court, Sirkali;

b) the trial Court namely the District Munsif Court, Sirkali, is

directed to frame additional issue prayed by the petitioner/defendant in his petition and pass suitable orders within a period of 15 days from the date of receipt of a copy of this order;

c) therefore, the trial Court is directed to take up the suit on day to basis, without giving any adjournment to either parties and dispose of the suit within a period of two months, since the suit is for the year 2008. Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit. Consequently, connected miscellaneous petition is closed. No costs.

24.04.2017

Note: Issue order copy on 25.01.2019
vs

Index : Yes
Internet : Yes

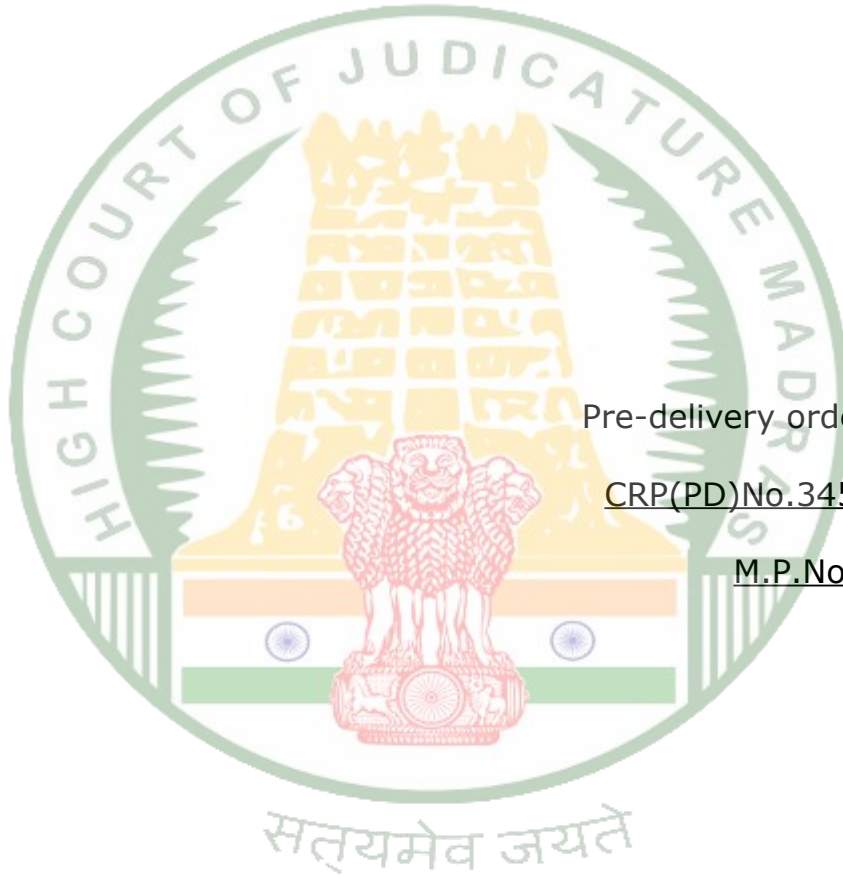
To

The District Munsif Court, Sirkali.

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M.V.MURALIDARAN, J.

VS



Pre-delivery order made in

CRP(PD)No.3453 of 2013
and
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