

IN THE HIGH COURT OF JUDICATE AT MADRAS

Dated: 24.02.2017

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)No.438 of 2013

and

M.P.No.1 of 2013

1.Hydharr Hussain

2.Fyjun

3.Jeelani

4.Ryne

... Petitioners

Vs.

Gurubalan

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 16.07.2012 made in I.A.No.615 of 2006 in O.S.No.151 of 2006 on the file of the Additional District Munsif Court, Villupuram.

For Petitioners : Mr.T.Dhanyakumar

For Respondent : Mr.N.Suresh

ORDER

The petitioners prefer this instant Civil Revision Petition as against the Fair Order and Decretal order made in I.A.No.615 of 2006 in O.S.No.151 of 2006 on the file of the learned Additional District Munsif Court, Villupuram.

2.The respondent herein has filed the above Suit for Declaration, Permanent Injunction and Mandatory Injunction in O.S.No.151 of 2006 as against the petitioners herein.

3.Along with plaint, the respondent herein has filed I.A.No.615 of 2006 for appointment of Advocate Commissioner and the same is found allowed and the advocate commissioner has inspected the suit property and submitted his report dated 6.4.2010 before the Trial Court.

4.Both the parties have also filed their objections to the report. In the said factual backdrop by an order dated 23.12.2011 the Trial court remitted the warrant to the Commissioner for filing further report on hearing upon the objections.

5.The records further disclose that despite several adjournments the Commissioner not turned up to file his additional report and therefore the Trial Court has closed the said application vide the impugned order herein dated 16.7.2012. The said order of closure of Commission application by the trial court is under challenge in this civil revision petition.

6.I heard Mr.T.Dhanyakumar, learned counsel for the petitioners and Mr.N.Suresh, learned counsel for the respondent and perused the entire materials available on record.

7.On perusal of the impugned order and the records available, it appears that the advocate commissioner was appointed by the trial court and after inspection has filed his report and plan on 18.11.2011 and both the parties have filed their objections on 13.12.2011.

8.On hearing upon the said objections, it is seen that the Trial Court vide an order dated 23.12.2011 has remitted the warrant to the Commissioner with a direction to again inspect the suit property with the aid and assistance of the District Surveyor and to file a detailed report with specific measurements over certain constructions and its measurements.

9.The records further show that as the learned advocate commissioner has not filed his additional report, despite several adjournments by trial court either to file report or return the warrant and finally the Trial court has adjourned the suit to 16.7.2012.

10.Whereas on 16.7.2012, the said application was closed by the Trial Court, by holding that the application will be decided on considering the available previous report and the objections made over it.

11.I am unable to endorse the said approach of the Trial Court for simple reason that once having held that the subject matter requires reissuance of warrant to find out the actual measurements for proper adjudication, the trial court merely for the failure of the Advocate Commissioner cannot withdraw its previous direction or cannot adjudicate without proper material on record.

12.It is needless to say that the suit being for mandatory injunction, measurements of the suit properties will play a pivotal role in deciding the issue on hand.

13. Therefore, it would be absolutely inappropriate to proceed with the report, which lacks material particulars or measurements.

14. In the result:

(a) the civil revision petition is allowed by setting aside the order passed in I.A.No.615 of 2006 in O.S.No.151 of 2006, dated 16.07.2012, on the file of the learned Additional District Munsif Court, Villupuram;

(b) the trial Court namely the learned Additional District Munsif Court, Villupuram is hereby directed to pass suitable orders directing the Advocate Commissioner to file his additional report and plan within a period of one month from the date of passing the order;

(c) pursuant to the orders passed by this Court, the trial Court is directed to take up the suit in O.S.No.151 of 2006 on day to day basis, without giving any adjournment to either parties and dispose of the same within a period of one month thereafter, since the suit is for the year 2006;

(d) both the parties are hereby directed to give their

fullest co-operation for early disposal of the suit. No costs.

Consequently, connected miscellaneous petition is closed.

24.02.2017

vs

Note: Issue order copy on 28.01.2019

Index: Yes

Internet: Yes

To

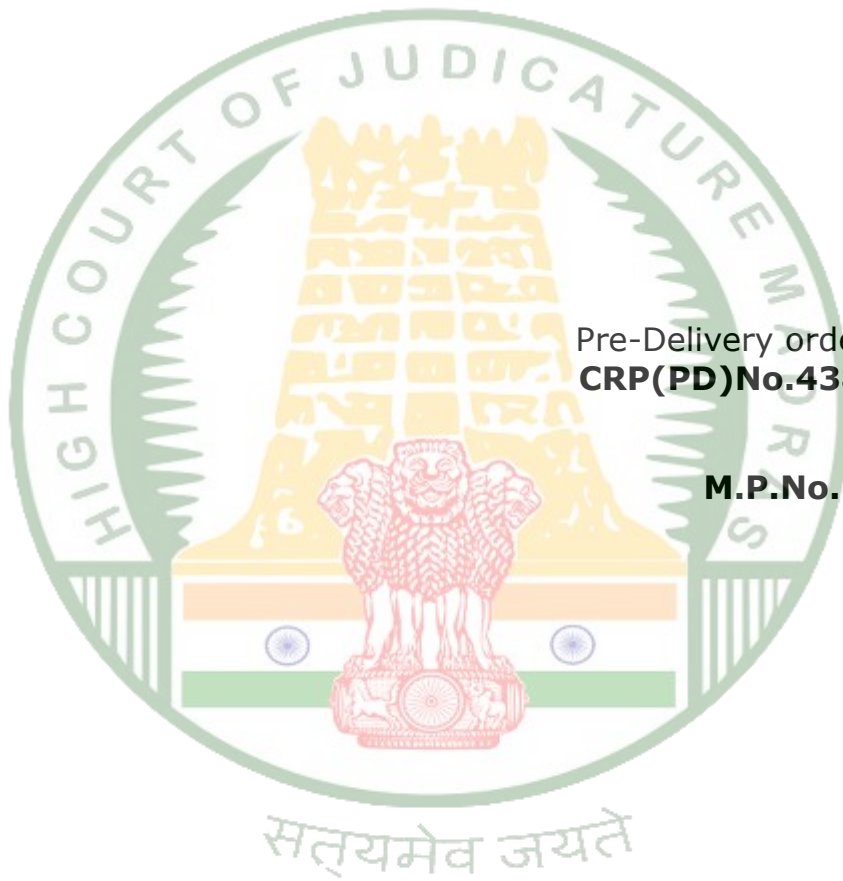
The Additional District Munsif Court,
Villupuram.



WEB COPY

M.V.MURALIDARAN,J.

VS



Pre-Delivery order made in
CRP(PD)No.438 of 2013
and
M.P.No.1 of 2013

WEB COPY 24.02.2017