

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2017

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD)Nos.4741 & 4742 of 2012  
& M.P.No.1 of 2012

Y.Jagan Lal Vedacyril

.. Petitioner in  
both the CRP's

Vs.

1.M/s.Anand Karthick Estates (P) Ltd.,  
Rep. by its Director Dr.Pandiyan  
No.1, Erikarai street  
New perungalathur  
Chennai-600 063.

2.Jebadurai

3.The Village Administrative Officer,  
Perungalathur, Chennai - 600 063.

4.The Tahsildar,  
Tambaram Taluk Office,  
Tambaram, Chennai - 600 045.

5.The Collector,  
Kancheepuram District,  
Kancheepuram.

.. Respondents in  
both the CRP's

PRAYER: Civil Revision Petitions filed under Article 227 of the  
Constitution of India, against the fair and decretal order dated  
05.01.2012 made in I.A.Nos.1063 & 1064 of 2011 in O.S.No.33 of  
2010 on the file of the District Munsif Court, Tambaram.

For Petitioner : Mr.S.Balasubramanian

For R1,R3 to R5 : No appearance

For R2 : Mr.T.Thiyagarajan

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decretal order dated 05.01.2012 made in I.A.Nos.1063 & 1064 of 2011 in O.S.No.33 of 2010 on the file of the District Munsif Court, Tambaram.

2.The petitioner is the plaintiff and respondents are the defendants in O.S.No.33 of 2010 on the file of the District Munsif Court, Tambaram. The petitioner filed the said suit against the respondents for permanent injunction restraining the respondents from disturbing or encroaching the petitioner's peaceful possession and enjoyment of the A schedule property, for mandatory injunction directing the respondents to remove the encroachments made on the other portion of A schedule property and for permanent injunction restraining the respondents 3 to 5 from in any manner issue any patta in favour of the respondents 1 & 2 or any other persons.

3. The petitioner filed I.A.No.248 of 2010 for appointment of an Advocate Commissioner to inspect the suit schedule property along with the Village Administrative Officer and the Taluk Surveyor.

The said application was allowed and Advocate Commissioner was appointed. He inspected the suit property with the help of Taluk Surveyor. At the time of inspection, the agents of the respondents 1 & 2 were present and the Advocate Commissioner found some trees and plants between the properties of petitioner and respondents 1 and 2. The parties, who have put up superstructure, objected to measuring the property. The Village Administrative Officer and Taluk Surveyor informed the same to the Advocate Commissioner that unless trees, plants and super structure are removed, it is not possible to measure the suit property. The Advocate Commissioner has filed interim report dated 09.03.2010 to this effect.

4. The petitioner filed two applications in I.A.Nos.1063 and 1064 of 2011 to give police protection at the time of inspection and to remove the encroachments, plants, trees etc., as reported by the Taluk Surveyor to the Advocate Commissioner at the time of inspection.

5. The respondents filed counter affidavit and opposed the applications and submitted that unless the encroaches are impleaded as parties, the applications filed by the petitioners are not maintainable. The permanent structures are not put up in the suit property and they are existing in some other property.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed both the applications holding that the petitioner has stated that some persons have encroached the suit property and only when those persons are impleaded, the Court can consider for giving police protection and for removal of encroachment.

7. Against the order of dismissal dated 05.01.2012 made in I.A.Nos.1063 & 1064 of 2011, the present two civil revision petitions are filed by the petitioner.

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

9. The petitioner has filed suit for permanent injunction as well as mandatory injunction. As far as mandatory injunction is concerned, the petitioner has stated that the respondents 1 & 2 have encroached the suit property and application filed by the petitioner for appointment of Advocate Commissioner was allowed, he inspected the suit property, filed interim report stating that when he inspected the suit property and measured the same with the help of surveyor, the agents of the respondents 1 & 2 and third parties objected to measure the same. On receiving interim report filed by

the Advocate Commissioner, the petitioner filed the present two applications for police protection as well as for removal of the super structure. In the affidavit filed in support of the applications, the petitioner has stated that some parties have encroached the suit property.

10. The learned Judge considering the averments of the petitioner in the affidavit filed in support of the application for appointment of an Advocate Commissioner, wherein the petitioner has stated that the respondents 1 & 2 are trying to encroach the suit property, whereas in the present applications, he has stated that some third parties have encroached the suit property, dismissed both the applications on the ground that the parties who have encroached the suit property are necessary parties. In view of the admission of the petitioner that some third parties have encroached the suit property, without their presence, the Court cannot pass any order for removal of the super structure put up by them.

11. In view of the above, the learned Judge has rightly dismissed the applications by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 05.01.2012.

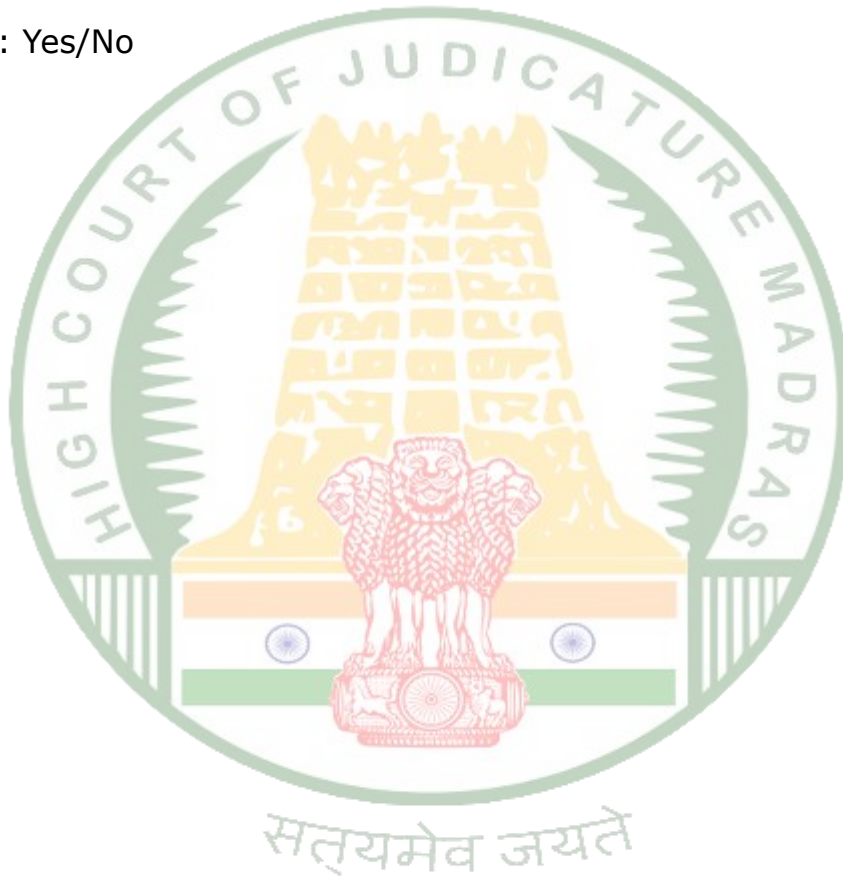


12. In the result, the two Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23.08.2017

Index : Yes/No

dm/kj



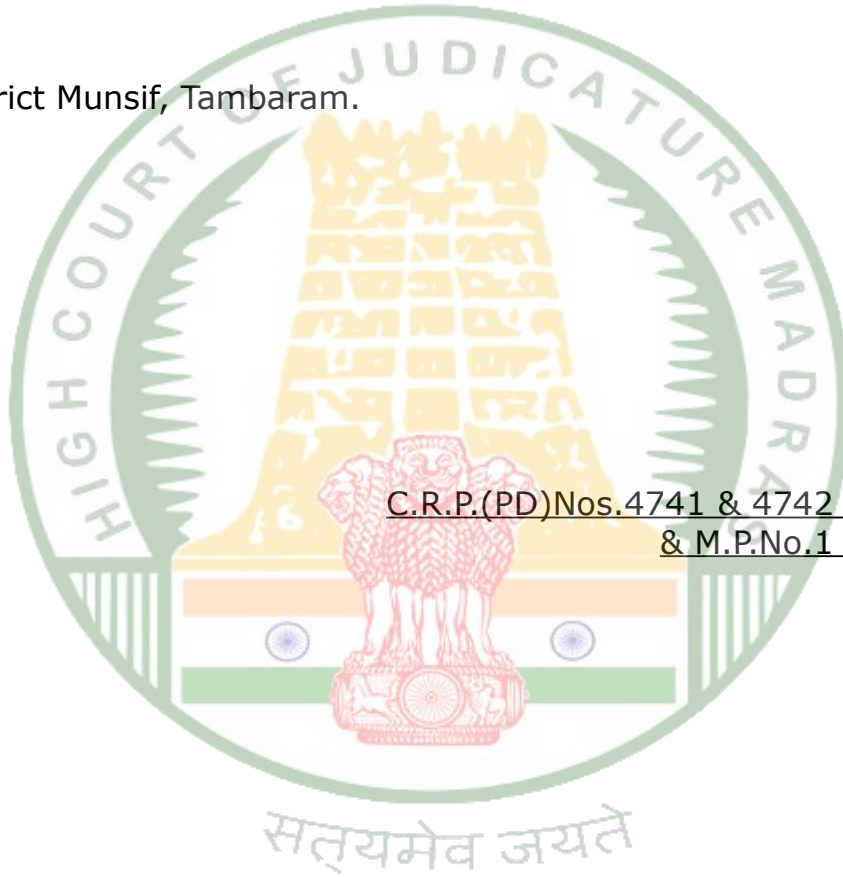
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**V.M.VELUMANI, J.**

dm/kj

To

The District Munsif, Tambaram.



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& M.P.No.1 of 2012

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