

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:05.04.2018

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

**CRP(PD)No.1280 of 2018
and
C.M.P.No.6580 of 2018**

Thirumarai Selvi

Petitioner

Vs.

1.Saraswathi
2.Muthukumaran
3.Akila
4.Srinivasan

Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to allow the Civil Revision Petition and set aside the order and decretal order of the Court of the District Munsif, Mannargudi, dated 20.12.2017, passed in I.A.No.399 of 2017 in O.S.No.144 of 2008.

For Petitioners :M/s.S.Baskaran

ORDER

This revision has been filed against the order of learned District Munsif, Mannargudi, dated 20.12.2017, passed in I.A.No.399 of 2017 in O.S.No.144 of 2008.

2. Respondents/plaintiffs have filed suit in O.S.No.144 of 2008 on the file of learned District Munsif, Mannargudi. Pending suit, the revision petitioner/defendant filed an application I.A.No.399 of 2017 in O.S.No.144 of 2008 for setting aside of the report of the Advocate Commissioner, re-issue the warrant to him and inspect the property and find out the admitted stone with the help of a Surveyor and to file a report.

3. The learned counsel for the petitioner would submit that the Order 26 Rule 9 of CPC specifically states that in any suit the parties raised a dispute regarding measurement and identity of the property, this Court should appoint an Advocate Commissioner to inspect the suit property with help of the qualified Surveyor, trial Court should have reissued the warrant to measure the property for identifying the survey stone. The failure to do so is failure to exercise the jurisdiction and the order is liable to be set aside.

4. It is not in dispute that the Advocate Commissioner inspected the property in the presence of the both the parties and their respective counsel and Advocate Commissioner has also narrated in his report that with the consent of both the parties, he has measured

the property. The revision Petitioner has not denied in his objection to commissioner report that either she or her counsel has not given any consent. In the said circumstances, this Court is of the view that there is no sufficient cause has been shown to set aside. The report of the Advocate Commissioner and further there is no illegality or infirmity in order passed by the trial Court.

5. Accordingly, the revision petition is dismissed. The trial Court is directed to proceed with the suit in O.S.No.144 of 2008 on merits and in accordance with law without in any manner being influenced by the observations of this Court in the present revision. No costs. Consequently, connected miscellaneous petition is closed.

05.04.2018

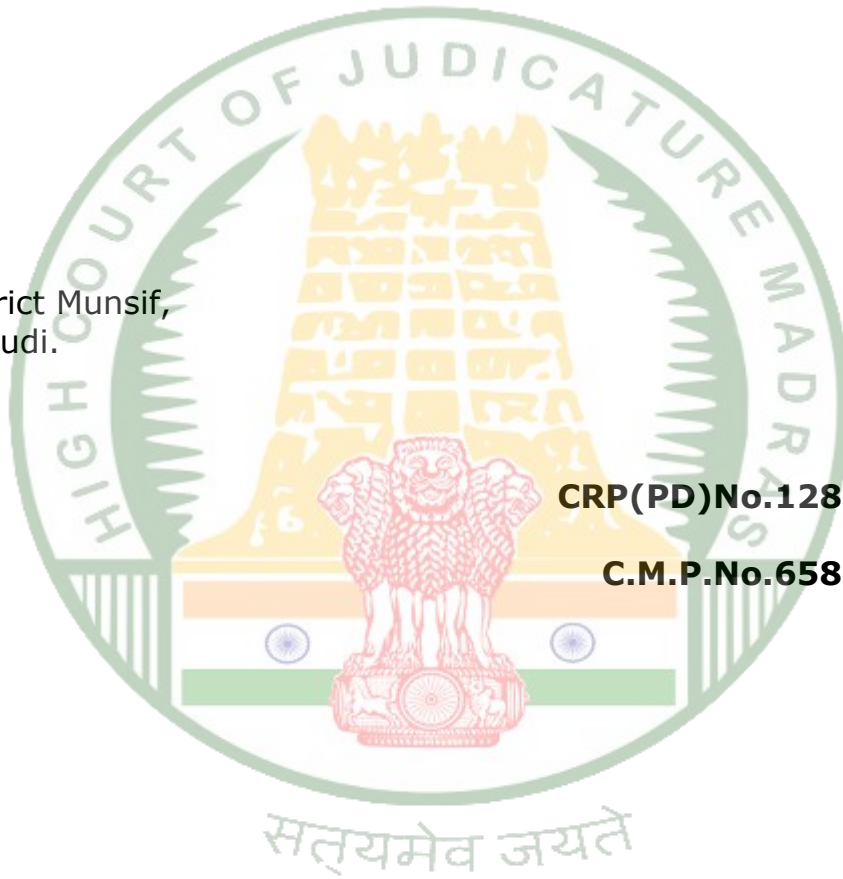
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P.VELMURUGAN, J.
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To

The District Munsif,
Mannargudi.



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