

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.06.2018

CORAM

The Hon'ble Mr.Justice **P.VELMURUGAN**CRP(PD)No.1599 of 2018
and C.M.P.No.8668 of 2018

V.R.Durairaj

..

Petitioner

vs.

1.Periyanayaki

2.P.Ravikumar

3.Manjula

4.Arunachalam

5.Kumar

6.Anitha

..

Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 10.01.2018 passed in I.A.No.1346 of 2017 in O.S.No.318 of 2013 on the file of the learned I Additional Subordinate Judge, Erode.

For Petitioner

... Mr.V.Balamurugane

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ORDER

The Civil Revision Petition has been filed by the petitioner seeking to set aside the fair and decretal order dated 10.01.2018

passed in I.A.No.1346 of 2017 in O.S.No.318 of 2013 on the file of the learned I Additional Subordinate Judge, Erode.

2. The brief facts of the case are as follows: The first respondent / plaintiff, represented by her Power Agent Krishnasamy Gounder filed a suit in O.S.No.318 of 2013 seeking for cancellation of the sale deed dated 01.07.2010 along with other reliefs. Pending the suit, the petitioner/5th defendant filed I.A.No.1346 of 2017 under Order 26 Rule 9 and Section 151 of CPC seeking to appoint an Advocate Commissioner and direct him to note down the physical features of the petition mentioned property in and around the same and find out the total extent available in the four side boundaries of the first respondent/plaintiff's total property and file his report and the said application was dismissed on 10.01.2018. Aggrieved by the said order, the present Civil Revision Petition has been filed.

3. Heard the learned counsel for the petitioner and perused the materials available on record.

4. According to the petitioner, the suit has been filed by the first respondent for declaration to declare the sale deeds dated 01.07.2010 executed by the sixth defendant purporting to act as the Power Agent

of the plaintiff in favour of the defendants 2 to 5 respectively are null and void and further reliefs of declaration and delivery of possession. During the pendency of the above said suit, the sixth defendant/petitioner filed an application for appointment of Advocate Commissioner to note down the physical feature of the property and to take measurement with the help of the qualified Surveyor.

5.From the available records, it is seen that the suit is filed by the first respondent for declaration to declare that the sale deeds are null and void and the petitioner has not filed any counter claim in the said suit. Further, admittedly, the petitioner has filed a separate suit in O.S.No.47 of 2012 for recovery of refund of amount paid for 20 cents and he has not filed any such application in the suit filed by him. Even in this suit, till commencement of trial, he has not filed any application. The suit is filed in the year of 2012 that too after completion of the plaintiff's side evidence and during the defendant side evidence, the petitioner has filed the application in I.A.No.1346 of 2017. It shows that unnecessarily to protract the trial, the petitioner has filed the above petition. Absolutely, there is no necessity to measure the suit property. There is no merit in the application filed by the petitioner and the Court below, rightly dismissed the application.

P.VELMURUGAN.J,

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Hence, there is no reasons to interfere with the impugned order passed by the Court below.

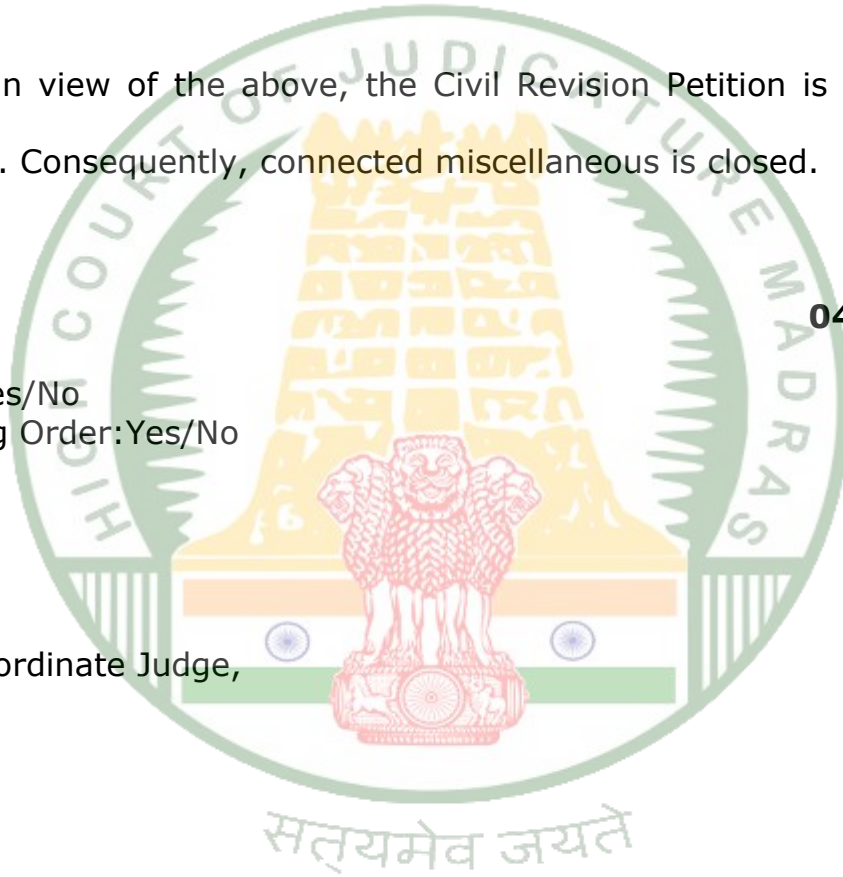
6.In view of the above, the Civil Revision Petition is dismissed.
No costs. Consequently, connected miscellaneous is closed.

04.06.2018

Index:Yes/No
Speaking Order:Yes/No
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To

The Subordinate Judge,
Erode.



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