

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2018

CORAM

THE HONOURABLE MR. JUSTICE **M.M.SUNDRESH**

C.R.P. (NPD) Nos.1653 and 1654 of 2018

and

C.M.P.Nos.8982 and 8983 of 2018

The Commissioner,
Tiruvallur Municipality,
Tiruvallur.

.. Petitioner in
both C.R.Ps

Vs.

Malligammal

.. Respondent in
both C.R.Ps

Civil Revision Petitions filed under Section 115 of Code of Civil Procedure against the petition and docket order dated 30.11.2017 in E.A.SR.Nos.4261 of 2012 and 4548 of 2017 in E.P.No.32 of 2008 on the file of the District Munsif Court, Tiruvallur.

For Petitioner .. Mr.P.Srinivas in both C.R.Ps

For Respondent .. Mr.T.Velumani in both C.R.Ps

COMMON ORDER

The petitioner is the defendant in the suit. The suit is filed for permanent injunction and mandatory injunction. In the written statement filed, the petitioner took a plea with respect to the description of the suit property. This plea was considered and judgment was rendered on merit way back in the year 2007 - 16.02.2007. Thereafter, the respondent filed the execution petition. At that point of time, three applications were filed by the petitioner. one is for expediting the execution petition and the second one is for appointment of Advocate Commissioner, which exercise was undertaken even at the earlier point of time pending suit, based upon which, the suit was decreed. Another application was filed under Section 47 of Code of Civil Procedure. All the applications were rejected on the ground that the petitioner is making an attempt to readjudicate the matter, which attained finality in the year 2007. Challenging the same, the present civil revision petitions have been filed.

2.Mr.P.Srinivas, learned counsel appearing for the petitioner would submit that the borewell is not situated in the suit property.

Thus, only under those circumstances, the application was filed for appointment of Advocate Commissioner. The Trial Court has not considered this aspect properly and hence interference is required.

3.Mr.T.Velumani, learned counsel appearing for the respondent would submit that the very same contention was raised in the written statement and thereafter, Advocate Commissioner was appointed. Considering the report and rejecting the contention of the petitioner, the suit was decreed. Hence this is nothing but an attempt to re litigate the settled issue.

4.This Court does not find any merit in the Civil Revision Petitions. As rightly submitted by the learned counsel for the respondent, the report of the Advocate Commissioner was taken into consideration by the Court at the time of deciding the suit. Therefore, the Court below rightly rejected the application on the ground of res judicata. The petitioner without challenging the decree, which has attained finality as early as 2007 - 16.02.2007 has chosen to challenge it in a different form, which is impermissible in law.

5. Insofar as the application filed under Section 47 C.P.C. is concerned, the scope of Section 47 C.P.C. is very clear. The said provision cannot be used to re adjudicate the matter. The said scope is very restrictive in nature. Therefore, the dismissal of this application also cannot be found fault with.

6. In such view of the matter, this Court does not find any merit in the Civil Revision Petitions and the same are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

29.06.2018

Index: Yes/No
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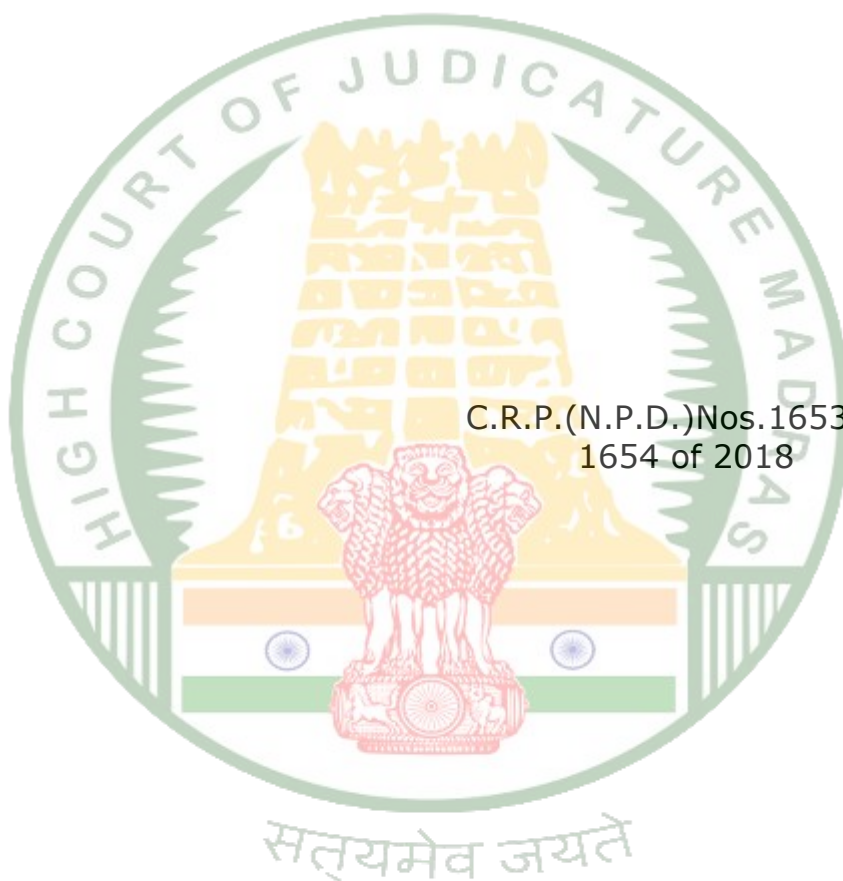
To

The District Munsif Court,
Tiruvallur.

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M.M.SUNDRESH, J.

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