

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.04.2018

CORAM

The Hon'ble Mr.Justice **P.VELMURUGAN**

CRP(PD).No.3836 of 2017

Sri Prathyangira Swamy
Sri Prathyangira Swamy Chittar Peedam Trust,
School Road,
Abarajithapuri, Sholinganallur,
Chennai - 119.

.. Petitioner

vs.

K.M.Venugopal

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the Trial Court to dispose of the I.A.No.1336 of 2014 in I.A.No.1261 of 2014 in O.S.No.683 of 2014 on the file of the District Munsif Court, Alandur in a time frame.

For Petitioner

... M/s.A.Palaniappan

For Respondent

...Mr.T.Murugamanickam
and Mr.P.Kannan

ORDER

The Civil Revision Petition has been filed by the petitioner against the order passed by learned District Munsif Court, Alandur, in I.A.No.1336 of 2014 in I.A.No.1261 of 2014 in O.S.No.683 of 2014.

2. The respondent/plaintiff filed I.A.No.1336 of 2014 in I.A.No.1261 of 2014 in O.S.No.683 of 2014, on the file of District Munsif Court, Alandur, seeking to appoint an Advocate Commissioner to measure the suit property with the help of Head Surveyor and to take photographs. The petitioner/defendant has filed counter stating that the suit is only for bare injunction and the respondent/plaintiff has filed the present petition belatedly only for the purpose of patching up the latches and to create evidence and prayed to dismiss the application.

3. The trial Court, after hearing the arguments, allowed the application under the impugned order and aggrieved against the order passed by the trial Court, the petitioner is before this Court.

4. The learned counsel for the petitioner/defendant submitted that the suit is only for bare injunction and the trial Court has erred in allowing the interlocutory application seeking appointment of an Advocate Commissioner, which has been filed belatedly.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

6. The main contention of learned counsel for petitioner/defendant is that the suit is only for bare injunction and the trial Court has erred in allowing the interlocutory application seeking appointment of an Advocate Commissioner, which has been filed belatedly and the same was filed only to patch up the laches and to create evidence. In support of his contention, learned counsel placed reliance on the judgment of this court and submitted that in a suit which has been filed only for bare injunction, there is no need to appoint Advocate Commissioner.

7. A perusal of the records, the respondent has filed only suit of bare injunction further an Advocate Commissioner can not be

appointed either to establish possession or to collect evidence. This is the suit for bare injunction the respondent has to prove his possession through his oral and documentary evidence but not through Advocate Commissioner.

8. In view of the above said reason, the Civil Revision Petition is allowed and the order passed by the Trial Court I.A.No.1336 of 2014 in I.A.No.1261 of 2014 in O.S.No.683 of 2014 on the file of the District Munsif Court, Alandur. Since the suit, which has been filed for bare injunction is of the year 2014 and all the pleadings have been completed, the trial Court is directed to dispose the matter within a period of six months from today. No costs.

04.04.2018

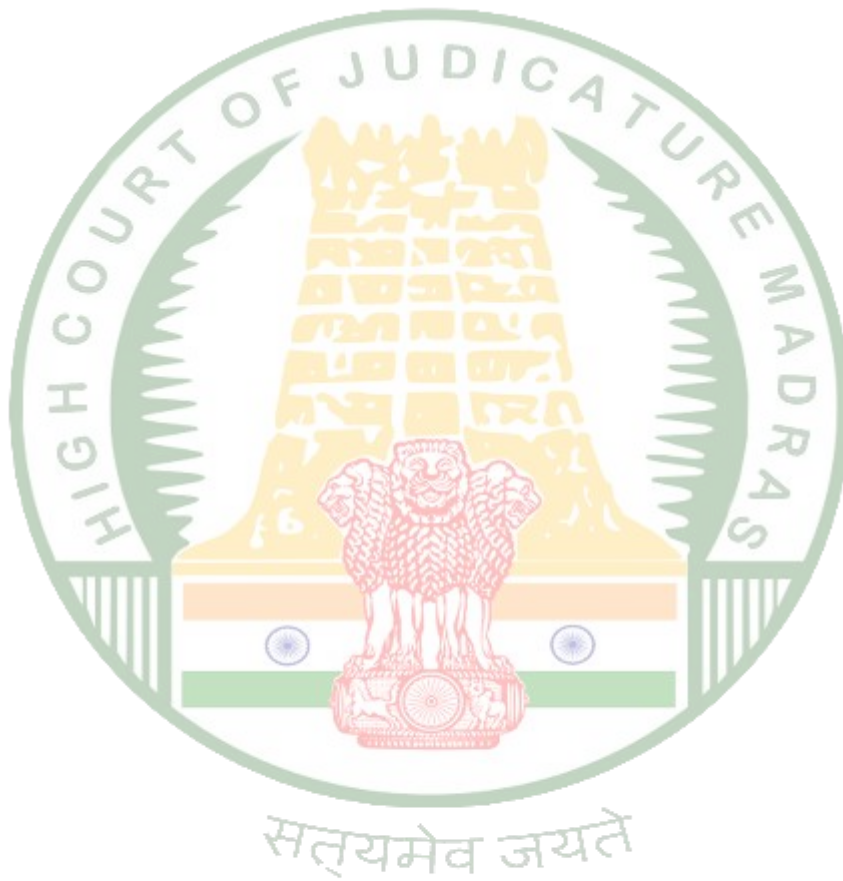
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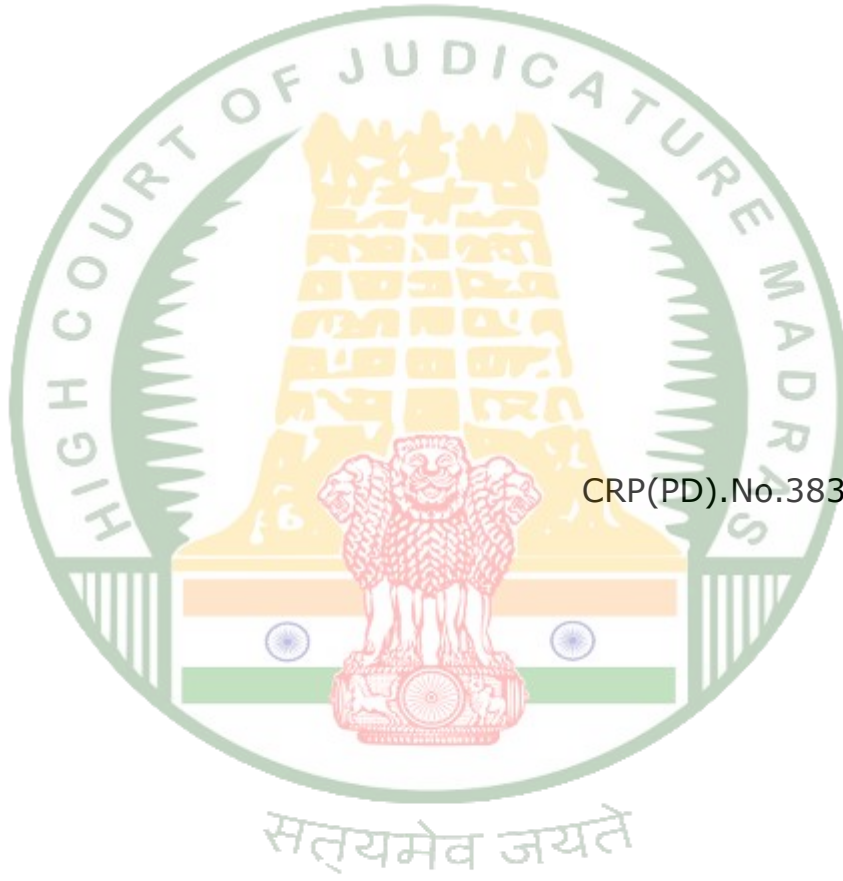
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