

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No.4230 of 2017
and
CMP.No.19823 of 2017

1. Subramani
2. Rajendran
3. Mani

.. Petitioners

Vs

1. Pachamuthu
2. N.P. Muthusamy
3. Subramani
4. Mallamuthu
5. Kolandhai
6. Muthusamy
7. Sivaraj

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 18.04.2017 made in I.A.No.413 of 2017 in O.S.No.80 of 2015 on the file of the District Munsif cum Judicial Magistrate Court, Pennagaram, Dharmapuram District.

For Petitioners : Mr. C. Prabakaran
For Respondents : Mr. P. Valliappan for R1 to R4
R5 to R7 Given up

ORDER

This Civil Revision Petition arises against the fair and decreetal order dated 18.04.2017 made in I.A.No.413 of 2017 in O.S.No.80 of 2015 on the file of the District Munsif cum Judicial Magistrate Court, Pennagaram, Dharmapuram District.

2. The learned counsel for the petitioner would submit that the respondents 1 to 4 herein have filed a suit in O.S.No.80 of 2015 seeking for declaration and permanent injunction. In the aforesaid suit, the respondents 1 to 4 have also filed an Interlocutory Application in I.A. No. 413 of 2015 under Section 151, Order XXVI Rule 9 of CPC seeking to appoint an Advocate Commissioner to inspect the suit property, measure the property with the help of the Village Administrative Officer and Surveyor and to submit the report. The petitioners herein filed their counter affidavit in the said Interlocutory Application, objecting the contention of the respondents. Without considering the submission of

the petitioners in the counter affidavit, the court below has erroneously allowed the application. Therefore, the present revision petition has been filed before this Court.

3. According to the petitioners, the counter affidavit has been filed in the I.A. No.413 of 2015 by the petitioners/ defendants on 17.02.2016. But the court below has recorded in the order that no counter affidavit has been filed by the petitioners. The court below has not provided any opportunity to the petitioners, to contest the case on merits. Therefore, the order of the court below is liable to be set aside.

4. Per contra, the learned counsel for the respondents would submit that eventhough the counter affidavit has been filed by the petitioners, the court below has rightly concluded and allowed the application, by taking into consideration the nature of the relief sought in the application. He further submitted that pursuant to the order, report has also been submitted by the Advocate Commissioner before the court below.

5. The case of the petitioners is that they have filed the counter affidavit objecting the instant application seeking for appointment of Advocate Commissioner. When the counter affidavit has been filed and the same is an admitted fact by the parties concerned, the court below has lost its sight and has recorded that no counter affidavit has been filed by the petitioners/ defendants therein. Therefore, it is clear from the above said fact that the court below has not provided any opportunity to the petitioners herein, to put forth his case on merits. Hence, it is just and necessary for the court below to provide an opportunity to the petitioners and the said application has to be decided on merits.

6. In view of the above, the order dated 18.04.2017 made in I.A.No.413 of 2017 in O.S.No.80 of 2015 by the court below is set aside and remanded to the District Munsif cum Judicial Magistrate Court, Pennagaram, Dharmapuri District, to be decided on merits, as expeditiously as possible, preferably within a period of six weeks from the date of receipt of a copy of this order. The learned counsel for both the parties undertake to cooperate with the proceedings.

7. The Civil Revision Petition is allowed, with the above direction. Consequently, connected miscellaneous petition is closed. No costs.

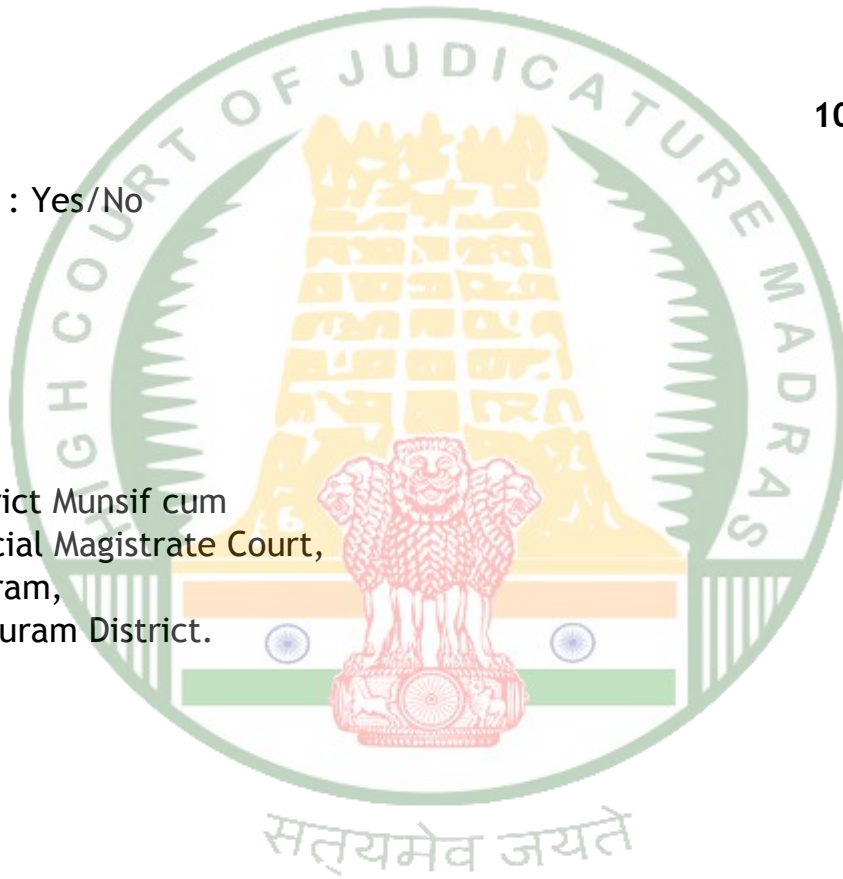
10.01.2018

Index : Yes/No

avr

To

The District Munsif cum
Judicial Magistrate Court,
Pennagaram,
Dharmapuram District.



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D.KRISHNAKUMAR,J.

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