

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRP.PD.Nos.337 & 668 of 2018

and

CMP.No.3443 of 2018

Madhu Chetty (died)

- 1.Rathinammal
- 2.Shanmugam
- 3.Srinivasan
- 4.Sivagami
- 5.Ramakrishnan
- 6.Ravi

.. Petitioners in both CRPs.

Vs

- 1.Chinnasamy
- 2.Parvathi
- 3.Madeshwari
- 4.Govindaraj
- 5.Ganesan
- 6.Saravanan
- 7.Kannan

.. Respondents in both CRPs.

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and decretal orders dated 13.03.2017 made in I.A.Nos.246 and 247 of 2015 in A.S.No.30 of 2013 on the file of the Sub Court, Dharmapuri.

For Petitioner : Mr.S.C.Vishwanth
in both C.R.Ps.

COMMON ORDER

The first defendant in O.S.No.43 of 2007 on the file of District Munsif Court, Dharmapuri, filed an appeal in A.S.No.30 of 2013 on the file of the Sub Court, Dharmapuri, during the pendency of the appeal, appellant/first defendant died, leaving behind the legal heirs, who are the revision petitioners herein.

2. According to the petitioners, the respondents 2 to 7 have filed the suit in O.S.No.43 of 2007 seeking declaration and permanent injunction and the trial Court partly decreed the suit. Against which, first defendant has filed an appeal in A.S.No.30 of 2013. When the appeal was posted for Judgment, the revision petitioners have filed two applications viz, one application in I.A.No.246 of 2015 to reopen the appeal and receive the application for appointment of Advocate Commissioner and another application in I.A.No.247 of 2015 to appoint an Advocate Commissioner to note down the physical features and to measure the suit property and to submit report along with sketch and plan. The appellate court dismissed both the applications. Challenging the dismissal orders, the revision petitioners have filed the present civil revision petitions before this Court.

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

4. On a perusal of the records, it is not in dispute that the respondents 2 to 7 have filed the suit against the the first respondent and deceased Madhu Chetty in O.S.No.43 of 2007 for declaration and permanent injunction and the suit was partly decreed by the trial court by granting the relief of permanent injunction alone. Therefore, the revision petitioners filed the applications to establish the possession, the appellate Court dismissed the applications on the ground that the appellate Court has granted sufficient opportunities for arguing the appeal, both the counsel for the parties have not chosen to appear and argue the appeal. Hence, the appellate Court reserved the case for pronouncing Judgment. At this juncture, the revision petitioners have filed these two applications to reopen the appeal and for appointing Advocate Commissioner, the respondents stated that the deceased first defendant had already filed the application for appointment of Advocate Commissioner and the same was dismissed. Hence, the applications filed before the Appellate Court are not sustainable in law and therefore, both the applications were dismissed. Though, the Court below had given a reason that the suit was filed for permanent injunction, no Advocate Commissioner cannot be appointed to gather the evidence regarding the possession of the suit property.

5. While appeal was pending for more than two years, these two applications for reopening and appointment of Advocate Commissioner to note down the physical features were filed only when the appeal was reserved for pronouncing Judgment. Further, on reading of the application would show that the revision petitioners filed the applications to establish the possession of the property. Thus, no application to appoint an Advocate Commissioner to establish the possession can be entertained therefore, the appeal suit need not be reopened and also the revision petitioners have not approached this Court with valid grounds.

6. In view of the above, this Court finds that there is no illegality or infirmity in the order passed by the trial Court. Hence, the Civil Revision Petitions are dismissed. Consequently, the connected Miscellaneous petition is closed. No costs.

7. However, if the counsel for the parties approach the appellate Court for advancing their arguments in the appeal without filing any application, the appellate Court shall hear the arguments of the counsel on either side and pronounce the Judgment in accordance with law before 28.04.2018. The learned counsel for either parties are at liberty to advance their arguments in the appeal in between 16.04.2018 to 20.04.2018 and later. The Registry is

directed to communicate the copy of this order to the appellate Court immediately before 13.04.2018 without fail. If any deviation finds, the same will be viewed seriously.

05.04.2018

Index : Yes/No
Internet : Yes/No
Speaking order : Non Speaking Order
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Note : Issue order copy on 11.04.2018

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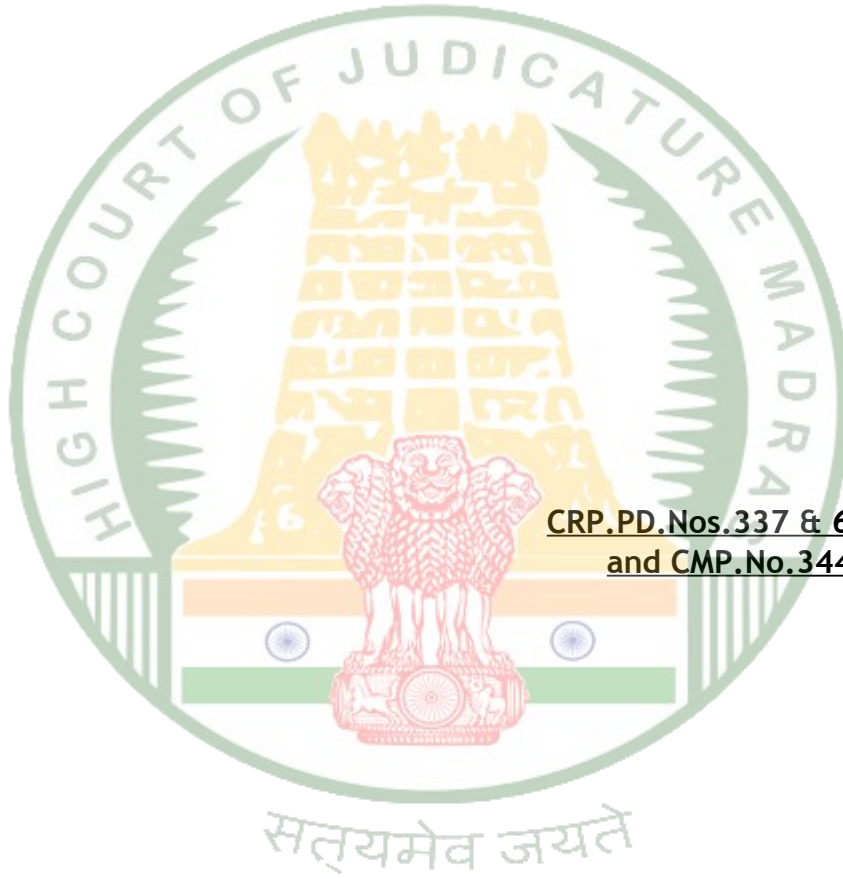
The Sub Court,
Dharmapuri.



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P.VELMURUGAN,J.

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