

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 515 of 2018
and
C.M.P No. 2713 of 2018

S. Sambandam .. Petitioner

Vs

1. C. Suseela
2. C. Damodaran
3. C. Sampath Kumar
4. P. Chandrasekar .. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 07.02.2018 made in I. A. No. 108 of 2018 in O.S. No. 941 of 2015 on the file of the Principal District Munsif, Alandur and dismiss the said application with costs.

For Petitioner : Mr. S. Thangavel

For Respondents : Mr.S. Silambanan Sr. Counsel
for M/s. Kaavya Silambanan Associates

ORDER

This revision petition is filed against the order dated 07.02.2018 made in I. A. No. 108 of 2018 in O.S. No. 941 of 2015 on the file of the Principal District Munsif, Alandur.

2. The learned counsel for the petitioner would submit that the petitioner has filed a suit in O.S. No. 288 of 2014 before the District Munsif Court, Chengalpet, for declaration and permanent injunction. Subsequently, the petitioner filed CRP (PD) No.4397 of 2017 and this Court, by order dated 10.01.2018 allowed the revision and appointed an Advocate Commissioner to find out the nature and to note down the physical features of the suit property. As directed by this Court, the Advocate Commissioner submitted his report. Thereafter, the respondents have filed I.A. No. 108 of 2018 in O.S. No.941/2015 before the Principal District Munsif, Alandur for appointment of an Advocate Commissioner to survey the schedule mentioned property with the help of Taluk Surveyor and to file his report. By order dated 07.02.2018, the same was allowed by the court below. Challenging the aforesaid order of the court below, the revision petition has been filed before this Court.

3. According to the petitioner, the respondents are the defendants in the suit filed by him and hence the application filed by them seeking for Advocate Commissioner is unsustainable in law. When the Court had already appointed an Advocate Commissioner and had directed to inspect the suit property and submit his report, the instant application is not maintainable.

4. At this stage, the learned senior counsel appearing for the respondents would submit that the petitioner has purchased the suit property vide sale deed dated 13.03.1991, under registered Document No.418/91, wherein the schedule of property is clearly mentioned as follows :-

" SCHEDULE B -- All that piece and parcel of Agricultural land marked as Site No.11 in the annexed plan comprised in S.No. 99/5 C1 (Ninety nine/ five c. one); 99/5 C2 (Ninety nine/ five c.two); and 99/5 C3 (Ninety nine/ five c.three); and No.36 Muttukadu Village, Chingleput Taluk & District admeasuring a total extent of 70 cents or thereabouts coloured RED in the annexed plan ... "

But the revision petitioner/ plaintiff has not made any averments as to how the petitioner is entitled for the property situated in 99/5 C-5 and claiming right over the property. Further, on instructions, the learned senior counsel requested this Court to permit the respondents to withdraw the Interlocutory Application in I.A. No.108 of 2018, with liberty to file an appropriate application before the court below, under Order VII Rule 11 of CPC, or raising a preliminary objection for maintainability of the suit. Ultimately, the respondent would be satisfied the court below, the aforesaid suit filed by the petitioner is maintainable. Hence, seeking permission to grant liberty to file an application before the court below and the present interim prayer can be decided at a later stage, if so warrants.

5. With regard to the request made by the learned counsel for the respondents to withdraw the I.A. No.108 of 2018, learned counsel for the petitioner has no serious objection. However, learned counsel for the respondent sought permission of this Court to grant liberty to file his objections and also to file appropriate applications, if any, in the suit.

6. In view of the above submissions made by the learned counsel for both parties, this Court is inclined to pass the following orders:

1. The respondents are permitted to withdraw the application in I.A. No. 108 of 2018 as not pressed and liberty is granted to the petitioner to file applications, if necessary, at a later stage.
2. Liberty is granted to the revision petitioners to file an application to amend the suit, if so advised and if the same is permissible under law.
3. It is open to the respondents to file appropriate application before the court below, to reject the plaint or raising the maintainability of the suit, under provisions of law.
4. In case of filing any applications, parties shall file the same within a period of two weeks from the date of receipt of a copy of this order.

7. The Civil Revision Petition is disposed of, with the above directions. Consequently, the connected Miscellaneous Petition is closed. No costs.

09.02.2018

D. KRISHNAKUMAR J.,

avr

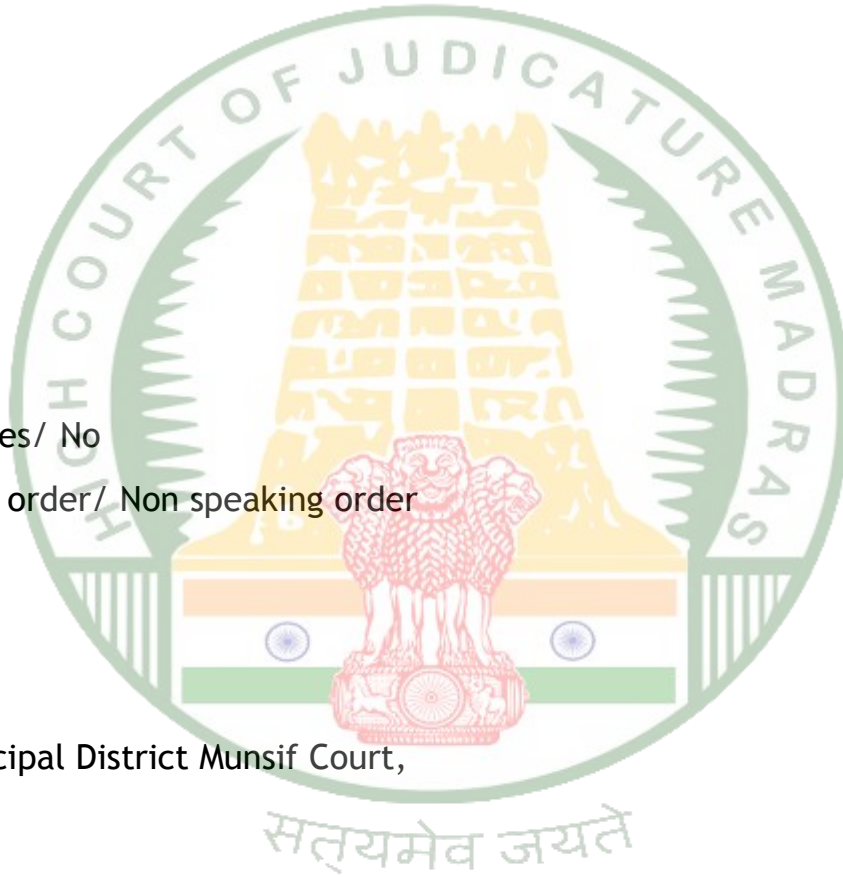
Index : Yes/ No

Speaking order/ Non speaking order

avr

To

The Principal District Munsif Court,
Alandur.



WEB COPY

CRP (PD) No. 515 of 2018
and
C.M.P No. 2713 of 2018

09.02.2018