

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.582 of 2015
& M.P.No.1 of 2015

Viswanathan

.. Petitioner

Vs.

N.A.Mustafa

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 17.02.2014 made in R.E.A.No.384 of 2011 in R.E.P.No.85 of 2009 in O.S.No.938 of 1987 on the file of the Additional District Munsif Court, Namakkal.

For Petitioner : Mr.P.Valliappan

For Respondent : Mr.C.Jagadish

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 17.02.2014 made in R.E.A.No.384 of 2011 in

R.E.P.No.85 of 2009 in O.S.No.938 of 1987 on the file of the Additional District Munsif Court, Namakkal.

2. The petitioner is fourth defendant and respondent is second plaintiff in O.S.No.938 of 1987 on the file of the Additional District Munsif Court, Namakkal. The respondent along with first plaintiff namely, N.A.Abdul Latheef, filed the above suit for declaration and injunction and obtained decree in their favour on 27.04.1993. The respondent filed R.E.P.No.85 of 2009 to arrest and detain the petitioner in civil prison on the ground that the petitioner in disobedience of the decree put up construction and prevented respondent from putting up construction. In the said R.E.P., the petitioner filed counter and is contesting the same. The respondent was examined as P.W.1 and when R.E.P. was posted for cross-examination of P.W.1, the petitioner filed R.E.A.No.384 of 2011 under Order XXVI Rule 9 of C.P.C. and Section 151 C.P.C. for appointment of an Advocate Commissioner to note down the existing physical features in the petition property and A, B, C wall in particular the concrete pillar, the suit 'BC' wall put up by the petitioner to fix the temporary roof of their bathroom.

3. According to the petitioner, the construction is in existence for more than 40 years and it was put up by his predecessor in title. The petitioner also contended that before the decree, there was settlement between the parties. The respondent has suppressed that mediation took place in the year 1992 and there was a settlement for using AB wall as his party wall and respondent agreed not to disturb the tiled roof on the BC wall. The respondent suppressing the said settlement, obtained the decree. Only if the Advocate Commissioner is appointed to inspect the property and file his report, the real facts will come into light and prayed for appointment of Advocate Commissioner.

4. The respondent filed counter affidavit and objected to the appointment of Advocate Commissioner.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, dismissed the application.

6. Against the said order of dismissal dated 17.02.2014 made in R.E.A.No.384 of 2011 in R.E.P.No.85 of 2009 in O.S.No.938 of

1987, the present Civil Revision Petition is filed by the petitioner/fourth defendant.

7. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

8. From the materials available on record, it is seen that the respondent has filed R.E.P.No.85 of 2009 to execute the decree dated 27.04.1993 alleging that the petitioner violated the decree passed in favour of the respondent. Whether the petitioner has violated the decree of the Court or not can be decided only by appreciating the evidence let in by the parties. It is for the respondent to prove his contention that the petitioner has violated and disobeyed the decree, by acceptable evidence.

9. From the impugned order of the learned Judge, it is seen that the Advocate Commissioner is appointed by the Court and he filed a report after his inspection and the same is on record. The learned Judge considered all the above facts and dismissed the application holding that the petitioner has not filed any document to prove that there was a settlement between the petitioner and

respondent. In the circumstances, there is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 17.02.2014.

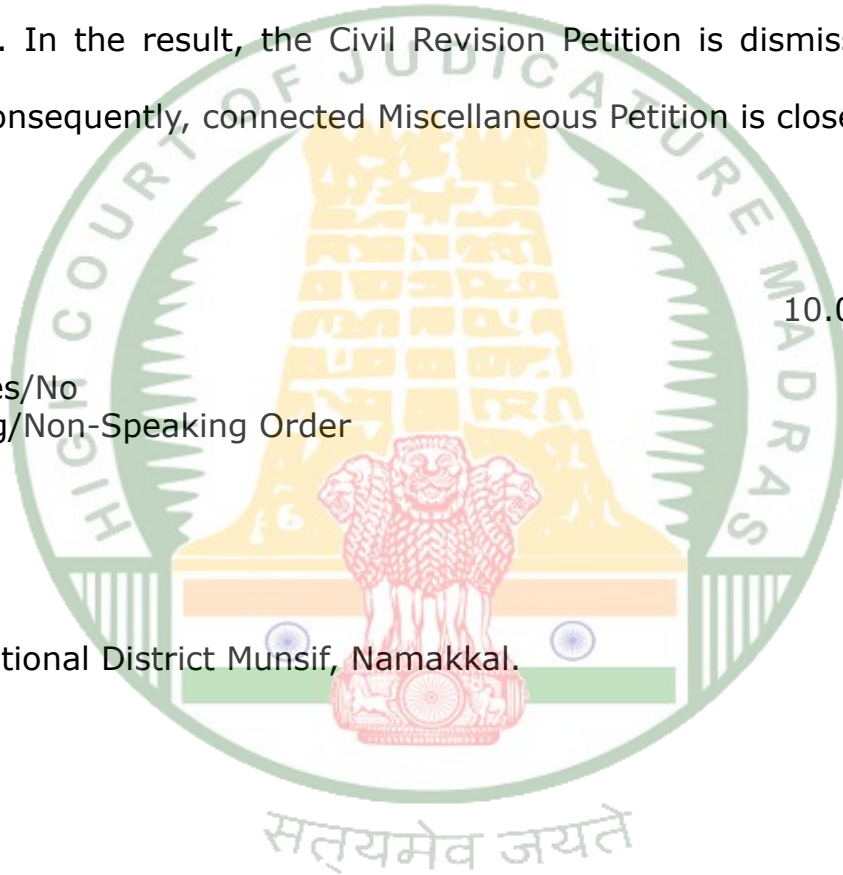
10. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

10.01.2018

Index:Yes/No
Speaking/Non-Speaking Order

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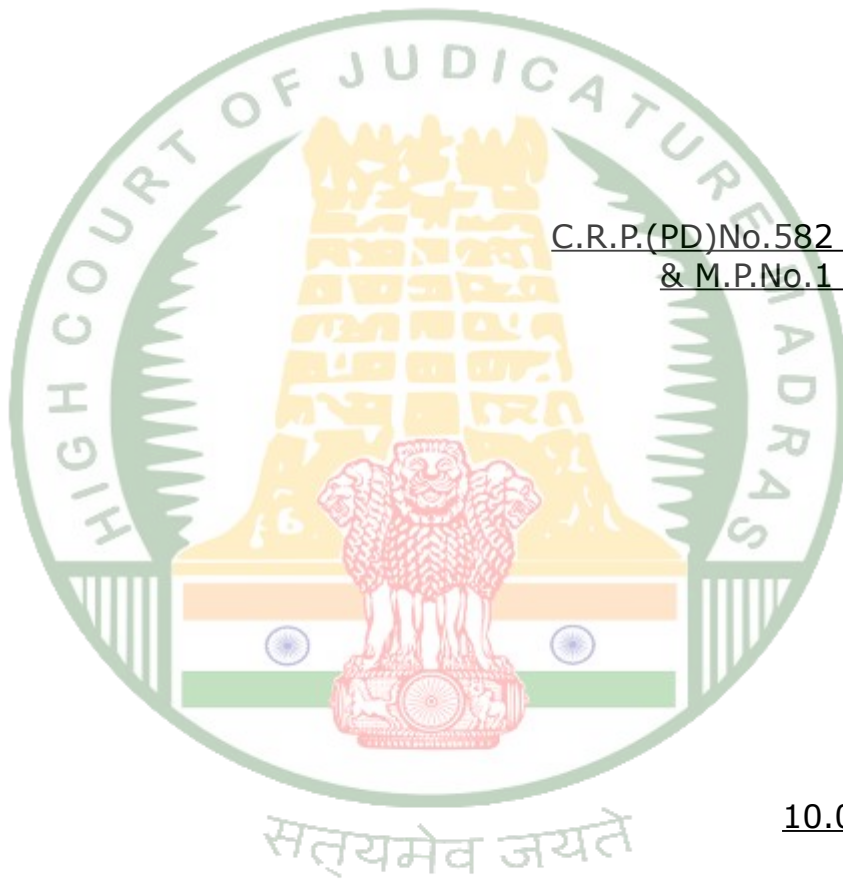
To
The Additional District Munsif, Namakkal.



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V.M.VELUMANI,J.

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