

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.583 of 2015
& M.P.No.1 of 2015
& C.M.P.No.1622 of 2016

Dhanalakshmi

.. Petitioner

Vs.

1.Gowri
2.Banu

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 16.12.2014 made in E.P.No.2017/2010 in O.S.No.4177 of 2005 on the file of the X Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mrs.Hema Sampath,
Senior Counsel,
for M/s.A.S.Kailasam Associates

For Respondents : Mr.P.Gunaraj

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 16.12.2014 made in E.P.No.2017 of 2010 in

O.S.No.4177 of 2005 on the file of the X Assistant Judge, City Civil Court, Chennai.

2.The petitioner and the respondents are the judgment debtor and decree holders respectively in O.S.No.4177 of 2005 and respondent and petitioners respectively in E.P.No.2017 of 2010. The respondents filed the said suit against the petitioner for possession of the property situated at North Madras Registration District, Sembium Sub-District, Tondiarpet Taluk, No.31, Kodungaiyur Village, No.102-B, Kamaraj Salai, Village Natham Survey No.104/6. According to the respondents, the petitioner is adjacent land owner. She filed O.S.No.5603 of 2004 on the file of the III Additional City Civil Court, Chennai and obtained an ex parte order of interim injunction on 29.10.2004. After obtaining the interim injunction, the petitioner encroached respondents' property, dispossessed respondents and started to put up construction. In the circumstances, the respondents have filed suit for possession. Both the suits, O.S.No.4177 of 2005 filed by the respondents and O.S.No.5603 of 2004 filed by the petitioner were heard together and both the suits were dismissed by the judgment dated 01.02.2008. The petitioner did not file any appeal against the said judgment. The respondents filed A.S.No.577 of 2005 on the file of

the IV Additional City Civil Court, Chennai, challenging the dismissal of O.S.No.4177 of 2005 filed by them. By the judgment and decree dated 30.04.2010, the said appeal was allowed and the judgment and decree dated 01.02.2008 made in O.S.No.4177 of 2005 was set aside and the suit was decreed. The respondents filed E.P.No.2017 of 2010 for possession of the suit property as per the decree granted in their favour.

3.The petitioner filed counter in the said E.P and raised various objections, mainly contending that property belongs to the petitioner and respondents have not identified property and sought possession of the property in Door No.102, Kamaraj Salai, Kodungaiyur Village, whereas filed E.P for possession of the property in No.102-B, Kamaraj Salai, Kodungaiyur Village.

4.The learned Judge considered the facts that while E.P was pending, the petitioner filed S.A.No.480 of 2011 before this Court. This Court, by the judgment and decree dated 09.08.2011, dismissed the Second Appeal filed by the petitioner. S.L.P(Civil) No.29828/2011 filed by the petitioner was also dismissed. The Executing Court, considering the decree passed in favour of the respondents, rejected the contention of the petitioner and allowed

E.P.

5. Against the said order dated 16.12.2014 made in E.P.No.2017 of 2010 in O.S.No.4177 of 2005, the present Civil Revision Petition is filed by the petitioner.

6. The learned Senior Counsel for the petitioner contended that the learned Judge failed to consider the document filed and marked by the petitioner in E.P and failed to consider that the property sought to be taken in possession is not identified and the respondents filed suit for possession of Door No.102, Kamaraj Salai, Kodungaiyur Village, whereas they filed E.P for possession of the property bearing Door No.102-B, Kamaraj Salai, Kodungaiyur Village.

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

8. This Court, on the request of the petitioner in M.P.No.1 of 2015, by the order dated 15.03.2016 appointed an Advocate Commissioner to take the assistance of the Tahsildar, Taluk

Surveyor, Perambur to identify and locate the suit property and measure the properties bearing Door Nos.102, 102-B and 102-C as per the sale deeds of the petitioner dated 28.03.2001 (Ex.B3) and 28.05.2001, (Ex.B4), the sale deeds of the first respondent dated 05.11.2003 (Ex.A2) and settlement deed executed by the second respondent dated 11.11.2010 (Ex.R7) in old Survey No.104/6, T.S.No.71, Kodungaiyur Village, Kamaraj Salai, Chennai 118. The Advocate Commissioner on receipt of the warrant of commission, issued notice to all the parties. In the presence of the petitioner, respondents and their counsel, the Advocate Commissioner inspected the suit property along with Tahsildar and Taluk Surveyor, identified the suit property and measured the same. Taluk Surveyor gave report along with the sketch. The Advocate Commissioner filed interim report and final report. Along with the final report, the Advocate Commissioner filed eight Annexures with regard to work done by them. Annexure 8 is the report of the Tahsildar with sketch of Surveyor.

9.From the report of the Advocate Commissioner and Tahsildar, sketch, it is seen that the property was identified and measured. As per the sketch, the properties shown as "A and B"

belong to the petitioner and the properties shown as "C and D" belong to the respondents. From the report of the Advocate Commissioner, it is seen that the property situated on the eastern side of the property mentioned in Ex.B4, bearing Door No.102-B is Door No.102-C. In the sketch given by the surveyor, the property bearing Door No.102-B and 102-C are shown as properties "C and D" belonging to respondents. From the above report, it is clear that properties belonging to the petitioner as well as the respondents are identified and property of the petitioner based on the document produced by him are shown as "A and B" and eastern side of the said property belongs to the respondents as per their sale deed. The properties now are identified and objection of the petitioner that properties are not identified is no longer available to him. The respondents have filed suit for possession of the property bearing Door No.102-B, Kamaraj Salai, Kodungaiyur Village and E.P is also for possession of the said property only.

10.The contention of the learned Senior Counsel for petitioner that respondents filed suit for possession of the property bearing Door No.102 and filed E.P for Door No.102-B is contrary to the facts and without any merits. The first Appellate Court has decreed A.S.No.577 of 2005, by the judgment and decree dated 30.04.2010

in O.S.No.4177 of 2005 filed by the respondents and it has been confirmed by this Court as well as by the Hon'ble Apex Court. In view of the above facts, the Civil Revision Petition is liable to be dismissed as devoid of merits.

11. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

08.02.2018

Index : Yes/No

Speaking Order/ Non-Speaking Order

gsa

To

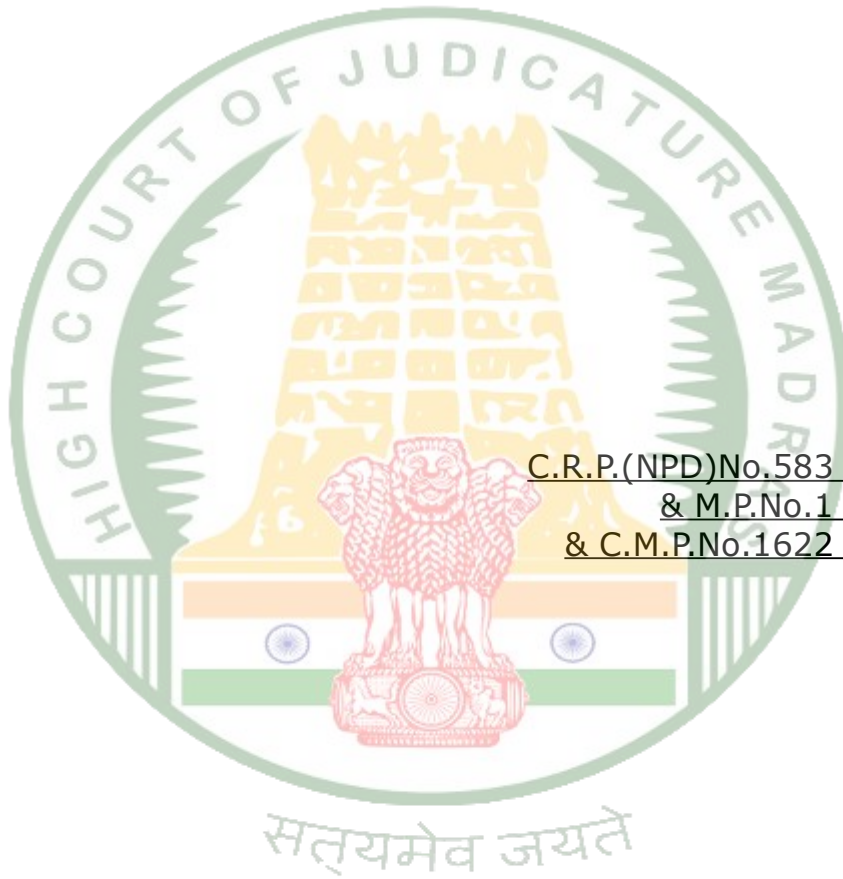
The X Assistant Judge,
City Civil Court,
Chennai.

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V.M.VELUMANI, J.

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