

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P (PD) No.715 of 2018

and

C.M.P. No.3702 of 2018

1.Mariammal
2.Thangavel
3.Madhi
4.Balumahendran
5.Myli
6.Menaka

.. Petitioners

1.Perumayammal
2.Govindammal
3.Nagaraj
4.Sivakannan
5.Thangavel
6.Selvi

.. Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 04.12.2017 made in I.A.No.620 of 2017 in O.S.No.37 of 2017 on the file of the learned District Munsif Court, Mettur.

For Petitioners

: Ms.Indira Priya Dharshni
for Mr.N.Manokaran

ORDER

This Civil Revision Petition arises against the fair and decretal order dated 04.12.2017 made in I.A.No.620 of 2017 in O.S.No.37 of 2017 on the file of the learned District Munsif Court, Mettur.

2. Heard the submission of the learned counsel for the petitioners. With the consent of the petitioner, the matter is disposed of at the stage of admission itself.

3. The learned counsel for the petitioners would submit that the respondents have filed the suit in O.S. No. 37 of 2017 for declaration and permanent injunction. The respondents/ plaintiffs also filed an Interlocutory Application in I.A. No. 620 of 2017 under Order 26 Rule 9 of CPC to measure the cart track with the help of a qualified surveyor/ VAO and file a report before the court below. According to the petitioners herein, the aforesaid application was allowed by the court below, without considering the objection of the petitioners/ defendants. Therefore the aforesaid order of the court below is liable to be set aside.

4. The respondents have filed the suit for declaration and

consequential injunction against the petitioners herein. As stated by the respondents in the affidavit, the property in S.No. 47/7 and 47/9 of Moolakadu Village were allotted to respondents' family along with common well right in S.No.47/13 and 47/15 of Moolakadu Village. The 5th petitioner's paternal uncle Perumal Gounder was allotted with the property in S.No. 47/14 and 47/48. The common road leads through S.No.47/8 and 47/4 to respondent's fields. The respondents and their family have established their right of easement of necessity over the suit cart track. Since the respondents are having joint and common interest in the suit path way along with the petitioners, they have filed the said suit for declaration and the application seeking for appointment of Advocate Commissioner.

5. The petitioners have objected the application stating that the said application has been filed only with an intention to grab the property belonging to them. Previously, the respondents filed a suit in O.S. No. 110 of 2014 for the very same purpose. Since the respondents failed to prosecute, the aforesaid suit was dismissed for default on 22.01.2016. Subsequently, the respondents had filed the present suit with unclean hands and that they are not entitled to abuse the process of

law. The revision petitioners have raised the contention before this Court. On merits of the suit, the said fact can be decided only at the time of trial of the suit. Therefore, the present application is only for the limited purpose to find out, whether the suit cart track is available or any other cart track is available, as contended by the parties. Considering the above facts, the court below has allowed the application and so this Court is not inclined to interfere with the order of the court below.

6. In fine, the Civil Revision Petition fails and the same is dismissed. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

05.03.2018

Speaking / Non Speaking order

{Issue order copy on 03.05.2018}

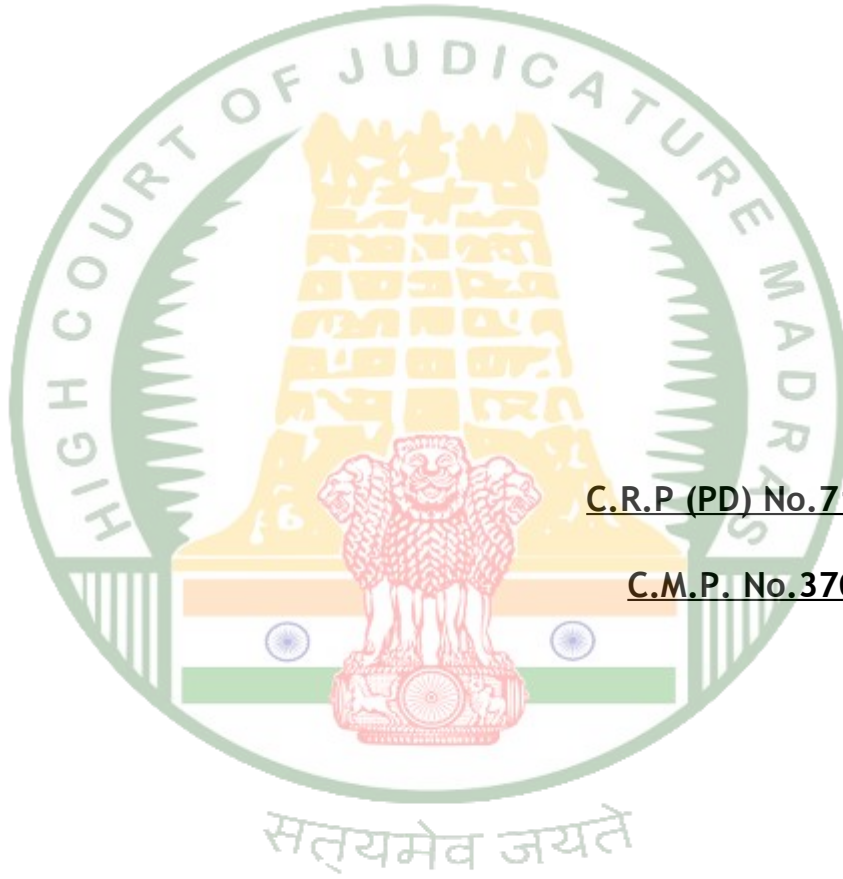
Index :Yes/No

To

The District Munsif,
Mettur.

D. KRISHNAKUMAR J.,

avr



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