

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.07.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD).Nos.717 & 754 of 2018
and C.M.P.No.3817 of 2018

Bharath Kumar Surana ... Petitioner in both C.R.Ps

Vs.

1. Dinesh Kumar Surana
2. Suseela Suranan
3. Ramesh Kumar Surana
4. Leela Surana

... Respondents in both C.R.Ps

Common Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal orders dated 18.08.2017 made in I.A.Nos.1138 & 1763 of 2015 in O.S.No.207 of 2011 on the file of the learned District Munsif, Ambattur.

For Petitioner : Mr.G.Shiva Surya
in both C.R.Ps

For Respondents : M/s.Hemalatha
in both C.R.Ps

COMMON ORDER

The relief sought for in this revision petitions are to set aside the fair and decretal orders dated 18.08.2017 made in I.A.Nos.1138 & 1763 of 2015 in O.S.No.207 of 2011 on the file of the learned District Munsif, Ambattur.

2. The revision petitioner filed a suit in O.S.No.207 of 2011 before the learned District Munsif, Ambattur, against the respondents for bare injunction. When the suit was pending, the revision petitioner filed two Interlocutory applications before the learned District Munsif, Ambattur which are as follows:

The application in I.A.No.1138 of 2015 in O.S.No.207 of 2011 was filed under Order XXVI Rule 9 of C.P.C. for appointment of an Advocate Commissioner to note down the physical features of the schedule mentioned property in the suit. Another application in I.A.No.1763 of 2015 in O.S.No.207 of 2011 was filed under Order VII Rule 14 (3) of C.P.C. to permit the petitioner/plaintiff to file additional documents. After giving opportunity, the trial Court dismissed both the applications.

4. Aggrieved against the said orders dated 18.08.2017, the revision petitioner/ plaintiff is before this Court by way of this revision petition.

5. The learned counsel for the petitioner would submit that the documents enclosed in the annexure are established that all the properties purchased from HUF Fund (Hindu Undivided Family). Therefore, document Nos.62 to 66 are relevant to establish his case. But, the trial Court failed to consider the relevancy of documents and simply dismissed the applications which warrants interference of this Court.

6. The learned counsel for the respondents would submit that the additional documents listed in the annexure are noway connected with the present suit and are not relevant to the particular case. Further, since it is the suit for bare injunction, the Advocate Commissioner cannot be appointed to prove the possession. Therefore, the trial Court rightly rejected the applications.

7. Heard both sides and perused the materials available on record.

8. It is not in dispute that the petitioner and the respondents are brothers. The revision petitioner filed a suit against the respondent in O.S.No.207 of 2011 on the file of the learned District Munsif, Ambattur for permanent Injunction. During the pendency of the suit, the petitioner filed two applications, one for appointment of an Advocate Commissioner to note down the physical features of the suit schedule property and another application is to receive the additional documents. So far document Nos. 1 to 61 are concerned, they are not related to the suit property.

9. Thus, it is the contention raised by the learned counsel for the revision petitioner that the properties covered under the documents referred to above are purchased out of from the sources of income of joint family

nucleus, cannot be accepted by this Court. However, the document Nos.62 to 66 in the Annexure, mentioned in the application in I.A.No.1763 of 2015 are the documents to prove that the petitioner is in possession of the property. However, the same have to be established, after the trial. Hence, the order of the trial Court in I.A.No.1763 of 2015 warrants interference.

10. Therefore, the order passed by the trial Court with reference to Document Nos.62 to 66 is set aside. **The trial Court is directed to receive document Nos.62 to 66 mentioned in the above said application in I.A.No.1763 of 2015, as additional evidence. However, the admissibility and validity of the documents can be decided in accordance with law at the time of marking the documents.**

11. Further, the suit is filed for bare injunction, the Advocate Commissioner cannot be appointed to establish the possession of the plaintiff / petitioner the possession has to be established only through oral or documentary evidence. Hence, there is no valid reason to interfere with the order passed by the trial Court in I.A.No.1138 of 2015 in O.S.No.207 of 2011.

12. In the result, the Civil revision petition in C.R.P.No.717 of 2018 is dismissed and the Civil Revision petition in C.R.P.No.754 of 2018 is partly allowed. Consequently, connected Miscellaneous petition is closed. No costs.

02.07.2018

Index:Yes/No

Speaking order/Non speaking order

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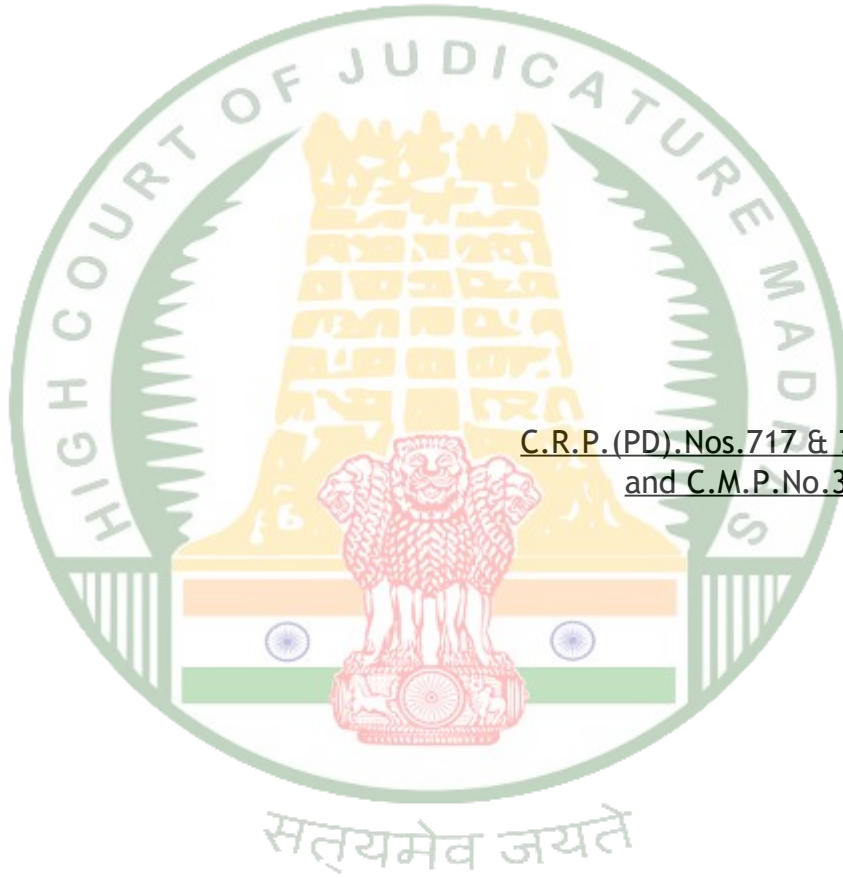
The District Munsif,
Ambattur.



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