

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23 .01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.977 of 2015
& M.P.No.1 of 2015

Jagatheesan

.. Petitioner

Vs.

1.Perumal @ Chinnathambi
2.Shanmugam
3.Ponjayee

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 05.09.2014 made in I.A.No.486 of 2013 in O.S.No.54 of 2013 on the file of the Additional District Munsif Court, Tiruchengode.

For Petitioner : Mr.N.Umapathi

For Respondent : Mr.V.Raghupathi

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 05.09.2014 made in I.A.No.486 of 2013 in O.S.No.54 of 2013 on the file of the Additional District Munsif Court, Tiruchengode.

2.The petitioner is third defendant and respondents are the plaintiffs in O.S.No.54 of 2013 on the file of the Additional District Munsif Court, Tiruchengode. The respondents filed the said suit against the petitioner and two others for declaration and permanent injunction. The respondents filed I.A.No.112 of 2013 for appointment of an Advocate Commissioner to measure the suit property. In the said application, the Advocate Commissioner was appointed. He inspected the property and measured the same with the help of the Surveyor and filed the report on 13.11.2013 along with the sketch. The petitioner filed objection to the report of the Advocate Commissioner and filed the present I.A.No.486 of 2013 under Order XXVI Rule 9 and Section 151 of C.P.C to scrap the report and plan of the Advocate Commissioner filed on 13.11.2013, to reissue warrant of commission to the same Advocate Commissioner with a direction to inspect the property with the help of Village Administrative Officer and qualified Surveyor and to file report. According to the petitioner, the Advocate Commissioner did not follow the procedure and did not measure the property from boundary stone. The measurement given by the Advocate Commissioner in the report is not correct and therefore, prayed for scrapping of the report and reissue of warrant of commission.

3.The second respondent filed counter affidavit which was adopted by the respondents 1 and 3, wherein the respondents have denied all the averments of the petitioner and contended that Advocate Commissioner, after issuing notice to all the parties measured the property with the help of Surveyor. At the time of inspection, the petitioner was present. He did not give any memo of instructions and did not object to the method of measurement. The petitioner has already filed objection to the report. The measurement given in the report is correct and therefore, there is no necessity to scrap the report of the Advocate Commissioner and to reissue of warrant of commission and prayed for dismissal of the application.

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

5.Against the said order of dismissal dated 05.09.2014 made in I.A.No.486 of 2013 in O.S.No.54 of 2013, the present Civil Revision Petition is filed by the petitioner.

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

7. The respondents filed suit for declaration and injunction and at the instance of the respondents, an Advocate Commissioner was appointed in I.A.No.112 of 2013. The Advocate Commissioner inspected the property and measured the same with the help of Surveyor in the presence of the petitioner and other parties. From the materials on record and order of the learned Judge, it is seen that the petitioner has not given any memo of instructions at the time of inspection of the property and did not raise any objection with regard to the way in which Surveyor measured the property. Subsequently, the petitioner has filed objection to the Commissioner's report. In view of the above facts, the present application filed to scrap the report and reissue of warrant of commission is devoid of merits. The report of the Advocate Commissioner is only to assist the Court. The learned Judge after appreciating the evidence let in by the parties may accept the report or reject the same. The petitioner also has right to question as to how the report of the Advocate Commissioner is not correct and also has the right to examine the Advocate Commissioner.

8.For the above reasons, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.01.2018

Index :: Yes/No

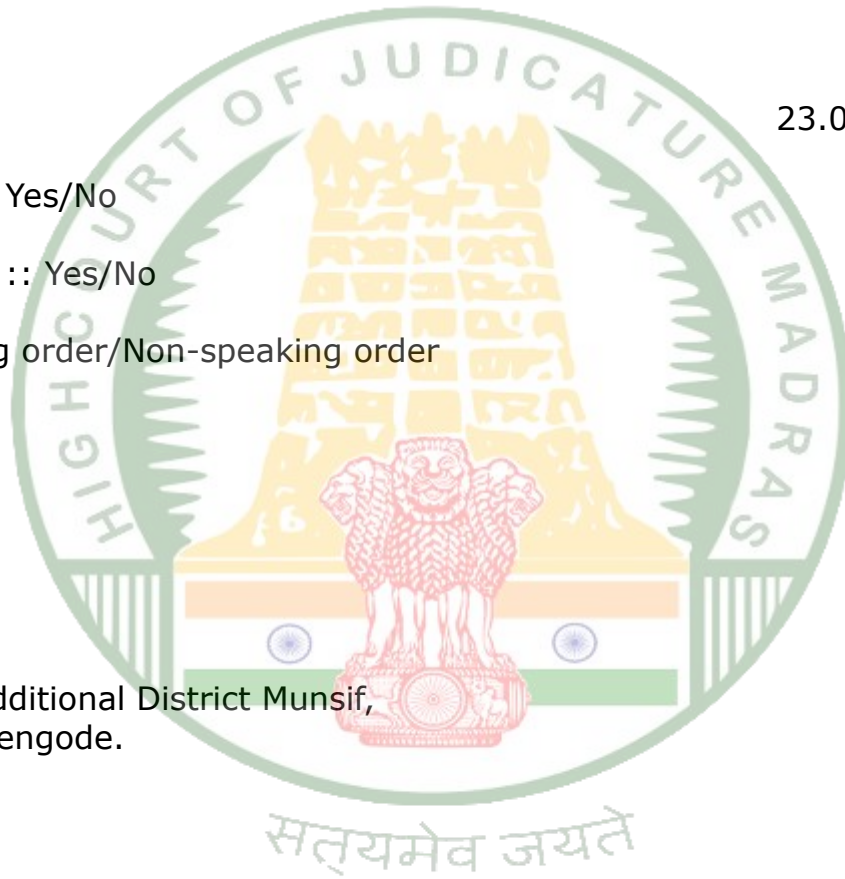
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Speaking order/Non-speaking order

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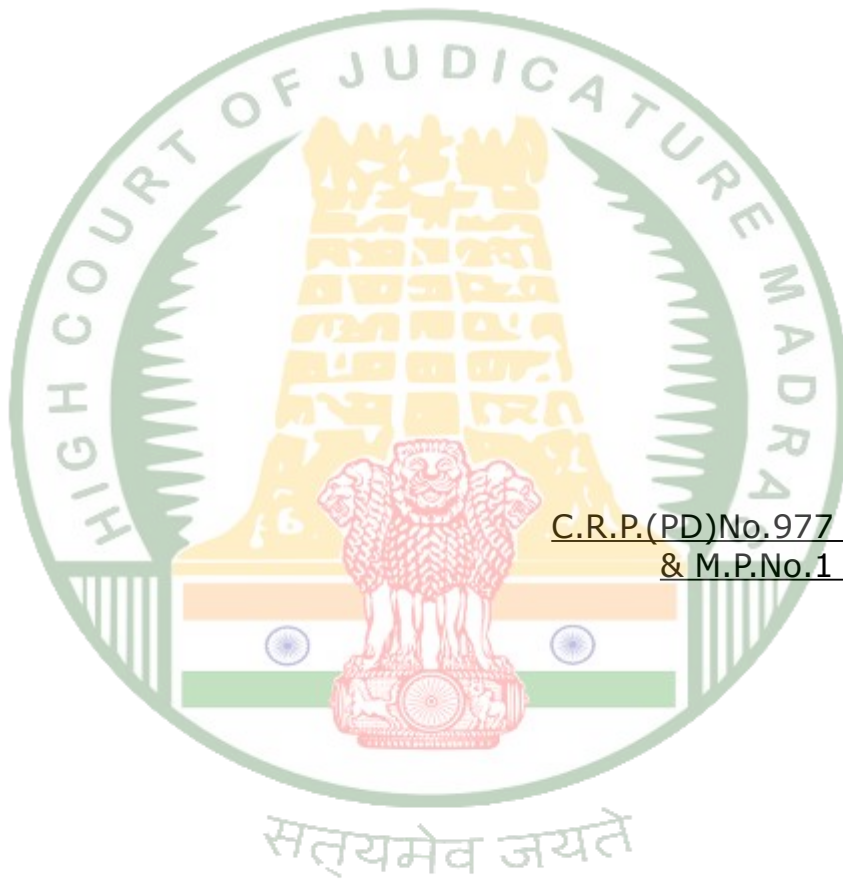
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V.M.VELUMANI,J.

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