

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.(PD).No.928 of 2018

and

C.M.P.No.5009 of 2018

Seenuvasan

... Petitioner

Vs.

1.Sri Sri Swamy Madhusudha
Nandhapuri Peedadhipathy,
Omkar Ashram Magaas Aasthini,
Kengeri,
Uttarahalli Main Road,
Srinivasapura,
Bangalore - 560 060.

2.Manivarma

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the Order of dismissal passed by the learned Principal District Munsiff Court, Tiruvannamalai, in I.A.No.641 of 2017 in O.S.No.1461 of 2017 dated 24.01.2018.

For petitioner : Mr.J.Ashok

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ORDER

The Civil Revision Petition has been filed against the Order of dismissal passed by the learned Principal District Munsiff Court, Tiruvannamalai, in I.A.No.641 of 2017 in O.S.No.1461 of 2017 dated 24.01.2018.

2. According to the revision petitioner, the revision petitioner has filed an interlocutory application in IA.No.641 of 2017 in OS.No.1461 of 2017 for appointment of an Advocate Commissioner to inspect the B Schedule Property in the above said suit with the assistance of a competent surveyor and file a report before the court below. In the aforesaid application, the revision petitioner has specifically stated in the averments that the respondents had attempted to trespass into the petitioner's property described in the Schedule A of the above said suit and attempted to install the boundary stones on it. According to the revision petitioner, the revision petitioner is in possession of the said A Schedule Property. Therefore, the revision petitioner has filed the present application for appointment of an Advocate Commissioner and submit the report. The said application was erroneously dismissed by the trial Court by holding that the said application filed by the revision petitioner is an attempt to collect the evidence through appointment of an Advocate Commissioner. Therefore, the revision

petitioner has filed the present application.

3. On perusal of the plaint in the aforesaid suit, the revision petitioner has filed the suit in OS.No.1461 of 2017 for permanent injunction. It is the case of the revision petitioner / plaintiff that the respondents are trying to interfere with the possession of the revision petitioner in respect of A schedule property. Therefore, the revision petitioner has filed the suit. In the averments of the plaint, the petitioner has stated that the respondents are trying to trespass into the A Schedule property. The present application has been filed by the revision petitioner by stating that the respondents are attempting to trespass in to the revision petitioner's property and to install boundary stones. Therefore, the revision petitioner has filed the present application in the aforesaid suit. The averments in the application that there is an attempt to install the boundary stones in the property has raised only in the present application. In the plaint, it has been averred that the respondents are attempting to trespass into the revision petitioner's property described as Schedule A of the suit property. Therefore, there is no such averments has been made in the plaint.

4. The court below has relied upon the decision rendered by the

Hon'ble High Court in the case of **S.Saravanan Vs. Mahalakshmi @ G.Rohini** reported in **2014 (3) MWN (Civil) p 751**, wherein the Hon'ble High Court has held that the application cannot be entertained with an intention of the petitioner to gather evidence through Advocate Commissioner and dismissed the said application.

5. However, the learned counsel for the revision petitioner has relied upon the decision of this Court in the case of **B.Amutha Vs. Anandhi Sankara Narayanan** reported in **CDJ 2017 MHC 2564**, wherein this Court has considered the prayer for appointment of an Advocate Commissioner.

On the facts of the above case, the defendant property comprised in difference Survey No. and the plaintiff property comprised in different Survey No. Therefore, there is no question of the defendant to encroach the suit property and denied all the allegations and sought for dismissal of the suit. Therefore, the petitioner has filed an application for appointment of an Advocate Commissioner. Thus, the application was allowed in the aforesaid case. Therefore, the above decision would not be helpful to the revision petitioner for seeking relief for the appointment of an Advocate Commissioner in the present case on hand.

6. Therefore, seeking interference in the order passed by the trial court cannot be entertained and the contention of the revision petitioner is liable to be dismissed.

7. The Civil Revision Petition fails and accordingly, the same is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

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Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

14.03.2018



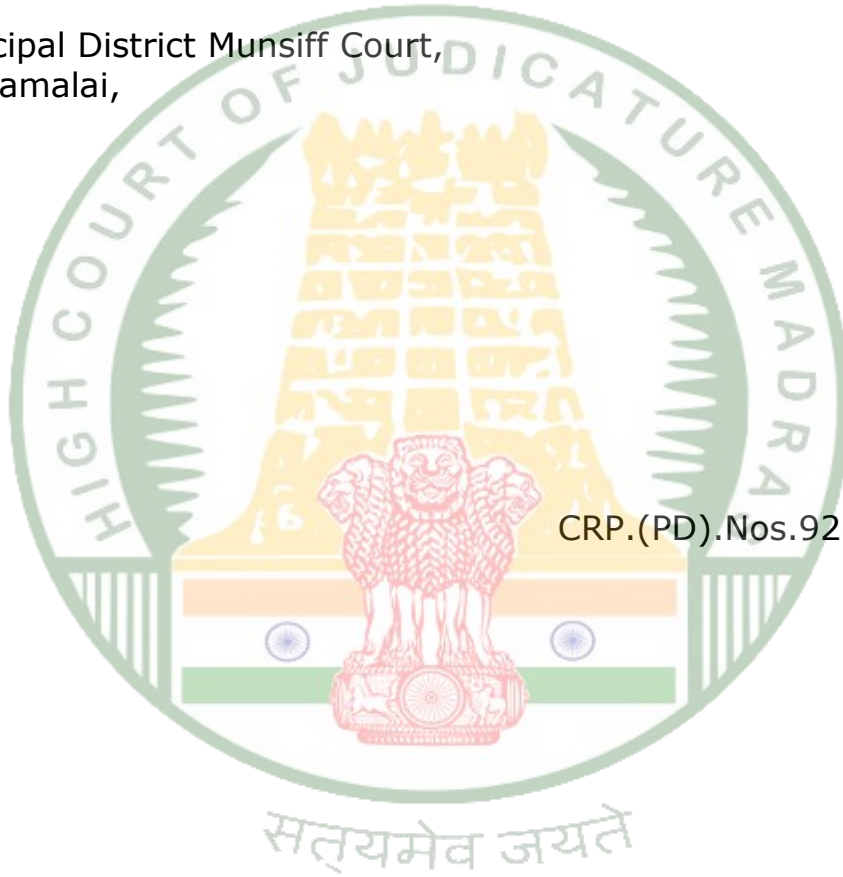
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D.KRISHNAKUMAR.J,

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To

The Principal District Munsiff Court,
Tiruvannamalai,



CRP.(PD).Nos.928 of 2018

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