

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

CORAM

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

CRP.(PD).Nos.992 & 993 of 2018

and

C.M.P.Nos.5314 & 5320 of 2018

CRP.(PD).No.992 of 2018:

B.Geetha

... Petitioner

Vs.

1.Malliga

2.Akash

3.Sivaranjani

4.B.Manimekalai

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Order and Decreetal Order dated 16.02.2018 and made in I.A.No.12654 of 2017 in O.S.No.5378 of 2013 on the file of the III Additional City Civil Court, Chennai and allow the above Civil Revision Petition on the file of this Court.

CRP.(PD).No.993 of 2018:

B.Geetha

... Petitioner

Vs.

1.Malliga

2.Akash

3.Sivaranjani

4.The Tahsildar,

Aynavaram Taluk, Chennai.

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the

Constitution of India to set aside the Order and Decreetal Order dated 16.02.2018 and made in I.A.No.12653 of 2017 in O.S.No.5378 of 2013 on the file of the III Additional City Civil Court, Chennai and allow the above Civil Revision Petition on the file of this Court.

For petitioner in both the CRPs' : Mr.S.Karthik Ganesh

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COMMON ORDER

The petitioner has filed these two Civil Revision Petitions to set aside the common order and decreetal order, dated 16.02.2018 passed in I.A.Nos.12653 & 12654 of 2017 in O.S.No.5378 of 2013 on the file of the III Additional Judge, City Civil Court, Chennai.

2. The petitioner has filed I.A.No.12653 of 2017 under Order 16 Rule 5 of C.P.C. r/w Sec.75 of Civil Rules of Practice to summon the Tahsildar, Ayanavaram Taluk to produce documents and to give evidence and I.A.No.12654 of 2017 has also been filed by the petitioner under Sec.151 of C.P.C. to reopen the evidence of plaintiffs for the purpose of summoning the Tahsildar, Ayanavaram Taluk to produce the documents and to give evidence. The trial Court dismissed both I.As. by common order, dated 16.2.2018. Challenging the aforesaid order, the petitioner has preferred the present Civil revision petitions before this Court.

3. According to the petitioner, the revision petitioner is

the first plaintiff in the suit. The petitioner and another have filed a suit in O.S.No.5378 of 2013 for the relief of partition and separate possession of 3/4th share in the suit property. Written statement has been filed by the respondents 1 to 3/defendants 1 to 3. However, no plea was raised by the defendants in their written statement with regard to non mention of the particulars of the suit property in the plaint. However, at the time of arguments, the respondents/defendants raised questions with regard to lack of survey number and other details of the suit property. Therefore, to prove that the suit property is not a poramboke land and to prove the correct description of the suit property, the present applications have been filed. The respondents/ defendants have filed counter statement by stating that the present application is not maintainable and the same will change the nature of the suit and therefore, the applications are not maintainable at the belated stage and the same are liable to be dismissed.

3. The issue involved in the Civil revision petitions viz., whether the petitioner is entitled to reopen the evidence and to summon the Tahsildar to give evidence in the suit under Order 16 Rule 5 of C.P.C. read with Sec.75 of Civil Rules of Practice.

4. The petitioner has filed the present applications by

stating that during arguments, the respondents/defendants raised a dispute regarding description of the suit property. In order to prove that the suit property is not a poramboke land and to get correct description of the suit property, it is just and necessary to summon the Tahsildar, Ayanavaram Taluk to give correct particulars of the suit property. The learned counsel for the respondents/defendants argued that the suit is reserved for judgment and at this stage, the present applications have been filed only to drag on the proceedings. The trial Court while dismissing the application observed that there is no plea or arguments and issues were not framed with regard to the description of the property. Therefore, the present applications cannot be entertained and the same are liable to be rejected. Therefore, the trial Court has observed that it is for the petitioner to file the suit with proper description of the property and if necessary file appropriate application. The respondents/defendants have not raised any dispute regarding description of the property and no issue has been framed. Therefore, the trial Court has rightly held that the issues cannot be decided without proper pleadings and without framing the issues in the suit. Therefore, this Court is not inclined to interfere with the order passed by the trial Court.

5. Accordingly, the Civil Revision Petitions stand dismissed. No Costs. Consequently, the connected Miscellaneous

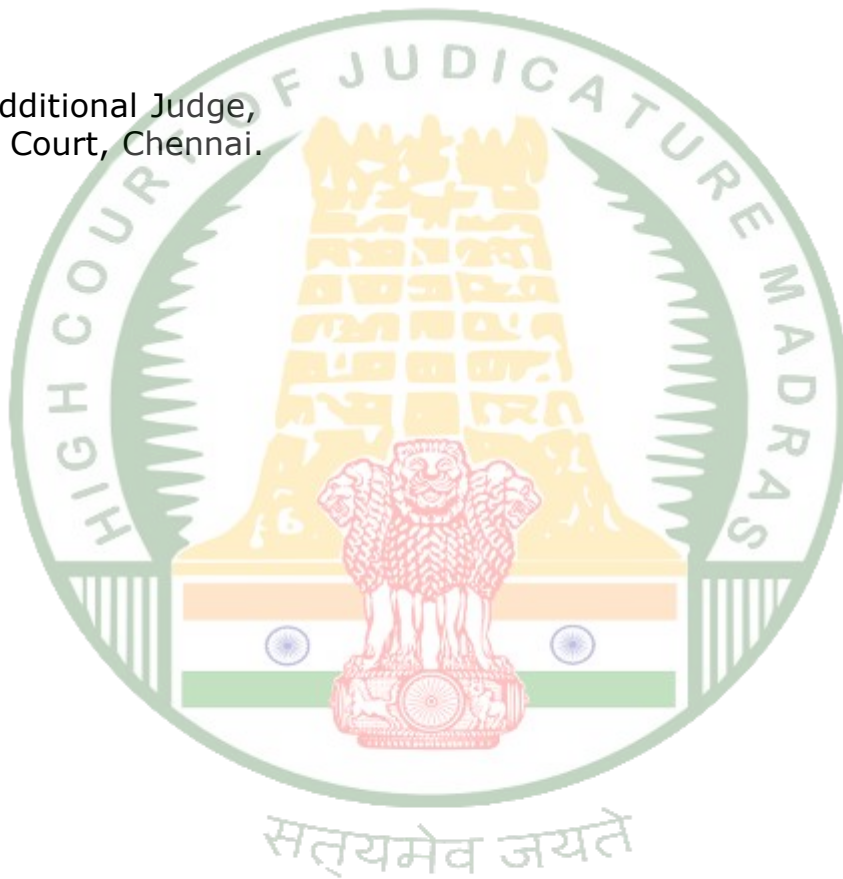
Petitions are closed.

14.03.2018

Speaking/Non Speaking order
Index: Yes/No
ah/vaan

To

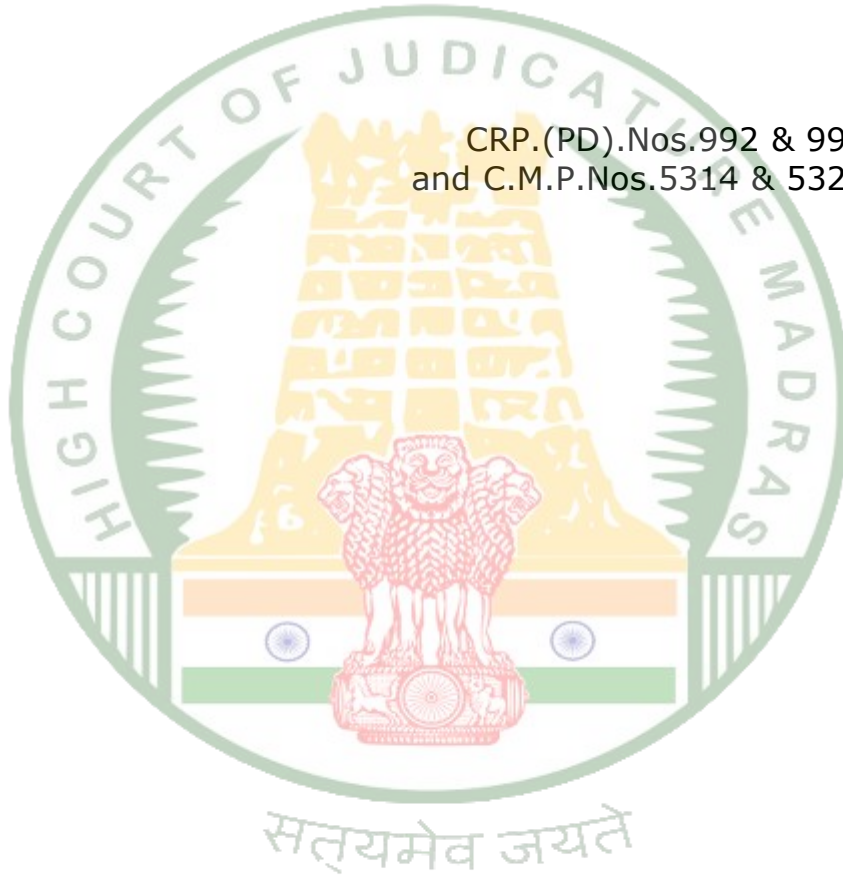
The III Additional Judge,
City Civil Court, Chennai.



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D.KRISHNAKUMAR. J,

ah/vaan



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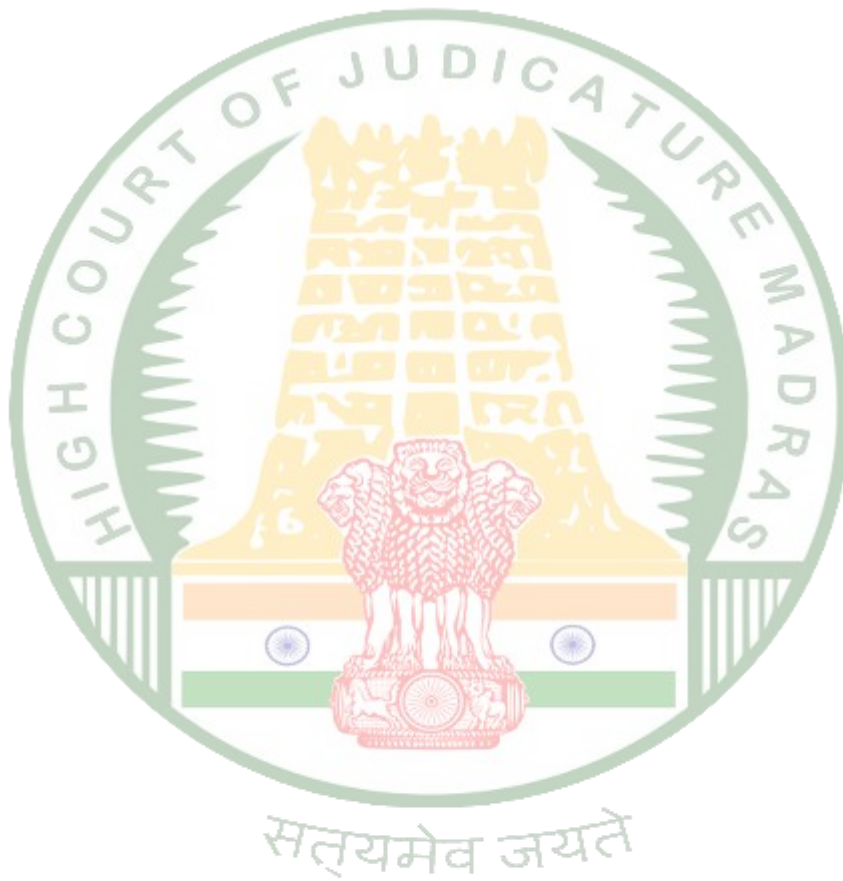
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petitioner has filed to reopen the plaintiff's evidence for the purpose of Tahsildar, Aynavaram Taluk to produce documents and give evidence regarding the plaint schedule property as PW6 in the above suit in O.S.No.5378 of 2013 on the file of this Court and to summon the Tahsildar, Perambur-Purasawalkam Taluk, the fourth respondent as Court witness to produce the documents and give evidence regarding the particulars like survey number, block number, etc., and also the nature of the property situated at 1/51, Pudhu Nagar third street, Water Tank Road, Aynavaram, Chennai - 600 023, the plaint schedule property in the above suit in O.S.No.5378 of 2013 on the file of this Court and the said applications dismissed by the Court below in paragraph No.20 of the Order.

3.According to the petitioner, the respondents have pleaded with regard to the non-description and description of the suit property in the written statement. Therefore, the respondents have raising the non-description and description of suit property at the time of the arguments. I.A.No.12653 of 2017 is filed under Order 16 Rule 5 of the Code of Civil Procedure and even on the merits of the case under Section 75 of the Civil Rules of Practice. The petitioner has to first satisfy the aforesaid Rules and Section. Therefore, he

filed these instant applications to summon the Tahsildar for evidence. Therefore, the Court below rightly dismissed the said applications and and there is no error or illegality in the orders passed by the Principal District Judge. Therefore, the Writ petitions are liable to be dismissed.



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