

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP(PD).No.2791 of 2016
and
CMP.No.14243 of 2016

V.Sathiyamoorthy .. Petitioner

Vs

R.Venkatesan .. Respondent

PRAYER

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decreetal order dated 05.04.2016 passed in IA.No.586 of 2016 in OS.No.210 of 2002 on the file of the District Munsif, Ambattur.

For Petitioner : Mr.R.Ramesh

For Respondent : Mr.G.Prakash

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ORDER

According to the revision petitioner, the revision petitioner has filed a suit in OS.No.210 of 2002 for permanent injunction against the respondent herein. The respondent has filed written statement on

21.11.2002. In the above suit, the evidence on both sides were concluded and posted for arguments. At that stage, the revision petitioner has filed an application in IA.No.586 of 2016 for appointment of an Advocate Commissioner to inspect the property along with the surveyor for inspection and note down the boundaries and also to ascertain in whose name the revenue record stands and submit the report before the court below. The said application was dismissed by the court below. Against the said order, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioner would submit that even after the completion of trial, the instant application filed by the revision petitioner is maintainable. The instant application has been filed only to note down the boundaries as well as the possession of the extent of the property and file the report. The aforesaid contention of the revision petitioner has not been considered by the court below. Therefore, the order of the court below is liable to be set aside.

3. Per contra, the learned counsel for the respondent would submit that the suit has been filed in the year 2002, issues have been framed, thereafter posted for trial and evidence on both sides

were concluded. At that stage, the instant application has been filed by the revision petitioner. The present suit has been filed for permanent injunction. The application to appointment an Advocate Commissioner filed by the petitioner after the evidence on both sides were concluded, is nothing, but to collect materials to prove the possession. Therefore, the Civil Revision Petition is liable to be dismissed.

4. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent and perused the materials available on record.

5. By considering the above said facts and submissions made by the learned counsel for the parties, it is clear from the above facts that the revision petitioner has filed the suit in OS.No.210 of 2002 for permanent injunction against the respondent. The respondent has filed written statement in the year 2002 by denying the averments in the plaint. In fact, the respondent has also filed a suit in OS.No.258 of 2002 for permanent injunction against the revision petitioner. Joint trial has been ordered by the court below. After the evidence on both sides were concluded, the present application has been filed for appointment of Advocate Commissioner

to inspect the suit property and submit the report. The learned counsel for the revision petitioner relied upon the Judgment of this Court in the case of *Shaik Zareena Kasam Vs. Patan Sadab Khan* and others reported in **2010 (4) ALD 198**, wherein the dispute arises between the parties is different from the facts of the present case. The other unreported Judgment of this court in CRP.NPD.No.2503 of 2009 dated 21.10.2009, wherein this Court has considered and allowed the application for appointment of Advocate Commissioner. In the aforesaid case, the specific case of the petitioner is that there is a building in the aforesaid land. Hence, this Court has considered an earlier decision of this Court and allowed the application. The facts of the above case would not apply to the present case. Further, in the present case, evidence of both sides were concluded and posted for arguments. At the belated stage, the present application has been filed by the revision petitioner. Therefore, the court below, has rightly dismissed the application, by holding, that it would amounts to collect the materials to prove possession in the suit property, therefore, in the light of the decision of this Court in the case of *C.Panneer Selvam Vs. Padmaja* reported in **2014 (1) NWN Civil p 268**, wherein this Court has held that "*at the part-heard stage, Advocate Commissioner cannot be appointed to collect evidence in the suit for permanent injunction and the application to appoint an Advocate Commissioner to collect*

evidence cannot be accepted". Hence, the instant application is not permissible, therefore the court below has rightly dismissed the said application. Hence, there is no error or illegality in the order passed by the court below.

6. Thus, the Civil Revision Petition fails and the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

14.02.2018

Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

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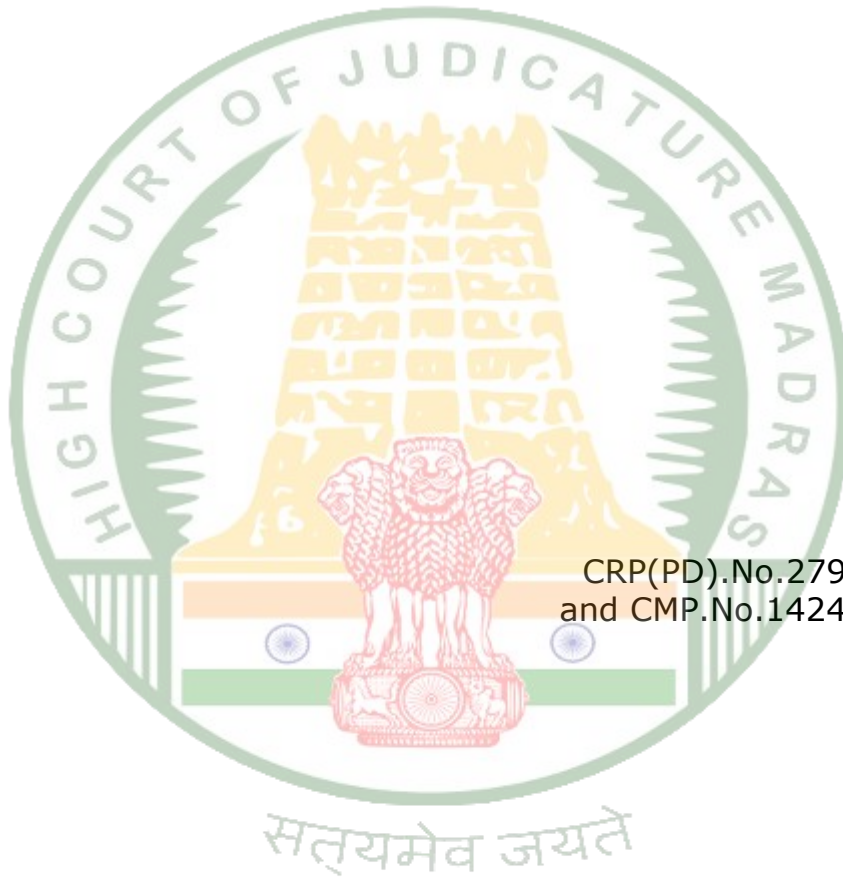
To

The District Munsif,
Ambattur.

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D. KRISHNAKUMAR J.,

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