

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P (PD) No.3505 of 2016
and
C.M.P. No.17828 of 2016

Lakshmi

.. Petitioner

Vs

Viswanathan

.. Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 27.10.2013 made in I.A.No.3152 of 2010 in O.S.No.181 of 2009 on the file of the Principal District Munsif Court, Kallakurichi.

For Petitioner : Mr.Mukunth
for M/s.Sarvabhauman Assoicates

For Respondent : Mr.S.Senthilkumar

ORDER

This Civil Revision Petition arises against the fair and decretal order dated 27.10.2013 made in I.A.No.3152 of 2010 in O.S.No.181 of

2009 on the file of the Principal District Munsif Court, Kallakurichi.

2. The petitioner has filed the suit in O.S. No. 181 of 2009 seeking for declaration and injunction. In the said suit, the petitioner filed an application in I.A. No.390 of 2009 for appointment of Advocate Commissioner to inspect the suit property and submit his report. Whiles, the petitioner filed another application in I.A. No. 741 of 2009 to direct the Commissioner to measure the properties as per UDR sketch. The said application was dismissed by the trial court on 14.10.2009. Thereafter, the Commissioner inspected the property on 19.12.2009 and filed his report on 30.01.2010 before the court below. Thereafter, the petitioner filed an application in I.A. NO. 3152 OF 2010 to scrap the report and to appoint an Advocate Commissioner to measure the suit property with the help of a Surveyor as per the UDR sketch. The said application was dismissed. Challenging the same, the present revision petition is filed before this Court.

3. According to the petitioner, the court below has failed to consider the contention of the petitioner that the respondent has

encroached the suit property and so the suit property has to be measured with the assistance of the Surveyor, as per the UDR sketch, which would minimise the evidence before the trial court. Further, no prejudice would be caused to the respondent if the said application is allowed.

4. The learned counsel for the respondents objected stating that the suit filed by the petitioner is of the year 2009. At the instance of the petitioner, the Advocate Commissioner's report was filed on 30.01.2010. Again the present application has been filed. Hence, the petition is not maintainable since the similar relief has already been prayed in the earlier I.A. No. 390 of 2009. Therefore, the court below has rightly dismissed the application.

5. Considered the rival submission of the learned counsel for both the parties and perused the material available on record.

6. From the above said facts, it is found that the petitioner has filed an application in I.A. No. 390 of 2009 with a prayer to appoint an Advocate Commissioner to inspect the suit property. The petitioner has

not made out a case and so filed an application in I.A. No.741 of 2009 to scrap the earlier report of the Advocate Commissioner. The said application was dismissed by the court below on 14.10.2009, since the application was filed for the same prayer, to appoint an Advocate Commissioner on the basis of the UDR sketch. The petitioner can adduce oral and documentary evidence before the court below, to prove his case in the suit against the respondent herein. Therefore, the order passed by the court below is sustainable and there is no warrant to interfere with the order of the court below.

7. In fine, the Civil Revision Petition fails and the same is dismissed. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

02.03.2018

Speaking / Non Speaking order

Index :Yes/No

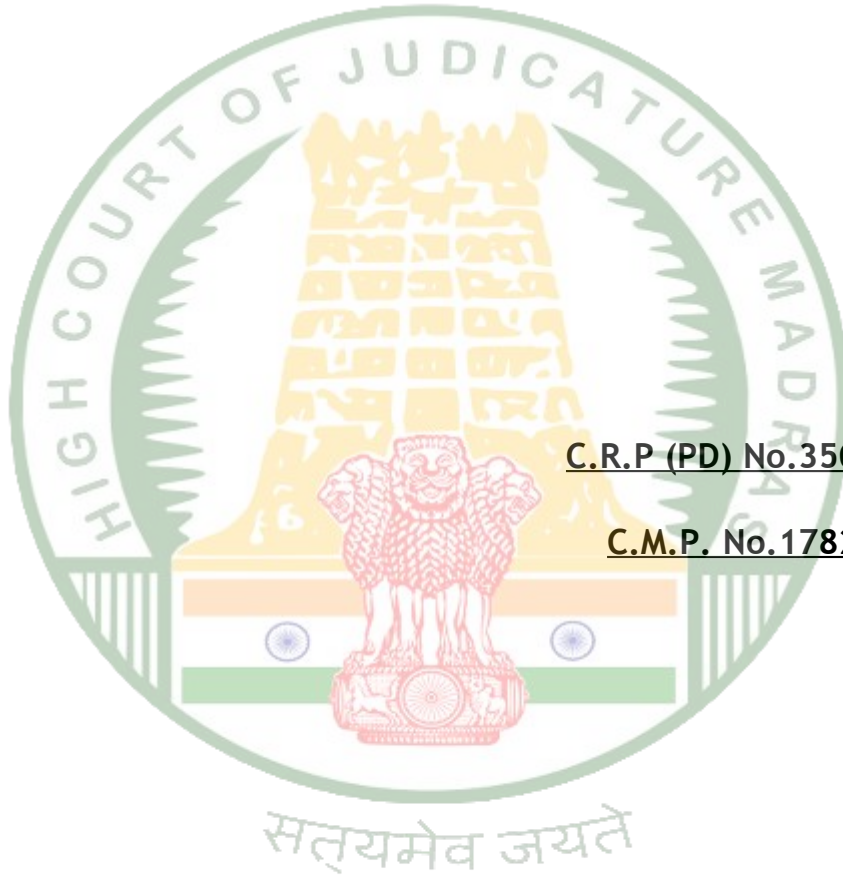
[Issue order copy on 03.05.2018]

To

The Principal District Munsif Court,
Kallakurichi.

D. KRISHNAKUMAR J.,

avr



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and
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