

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.821 of 2019
&
C.M.P.No.5368 of 2019

V.Subramani ...Petitioner

Vs

S.Kollapuri ... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 02.04.2018 made in I.A.No.32 of 2017 in A.S.No.65 of 2015 on the file of the Court of the Subordinate Judge, Ranipet, Vellore.

For Petitioner : Mr.T.S.Prabakaran

ORDER

The above Civil Revision Petition is filed challenging the dismissal of the application filed by the appellant seeking appointment of an Advocate Commissioner to inspect and demarcate the property of both the parties and note down the physical features with the help of a Taluk surveyor.

2.The suit O.S.No.91 of 2010 was filed by the respondent herein before the District Munsif, Ranipet for a declaration that the settlement deed executed in favour of the defendant was not valid and not binding upon him and for an injunction restraining the defendant from interfering with her peaceful possession and enjoyment of the suit properties.

3.Written statement has been filed in the said suit. The defendant/revision petitioner had taken out the very same plea that he has taken out in the impugned application that the suit property has been subdivided long back and that the suit property is not the property of the plaintiff.

4.After the contest the suit was decreed and challenging the same the revision petitioner had filed first appeal in A.S.No.65 of 2015 on the file of the Subordinate Judge, Ranipet. Pending the appeal nearly after two years present application has been filed

for an appointment of the Advocate Commissioner on a very same plea raised in the written statement.

5.The respondent herein has filed a counter contending that the said application is not maintainable since the plea have been taken in the written statement and therefore it could not be entertained at this stage. The learned Subordinate Judge, Ranipet by his order dated 02.04.2018 was pleased to dismiss the said application. Challenging the same the revision petitioner is before this Court.

6.Heard Mr.T.S.Prabakaran, learned counsel on behalf of the petitioner. It is seen that the suit is one to declare the settlement deed as null and void and for an injunction. The plea that has been taken in the impugned application is the same which is raised by the defendant/revision petitioner in the suit. No steps were taken by him when the matter was pending before the District Munsif, Ranipet.

7. More particularly he has taken a plea that the suit property has been subdivided and the plaintiff did not possess the suit properties. Despite such plea no steps had been taken by the defendant/revision petitioner to have the Advocate Commissioner appointed when the suit was pending. The present petition appears to be filed only to fill up the lacuna. The learned Judge has rightly dismissed I.A.No.32 of 2017 in A.S.No.65 of 2015.

In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

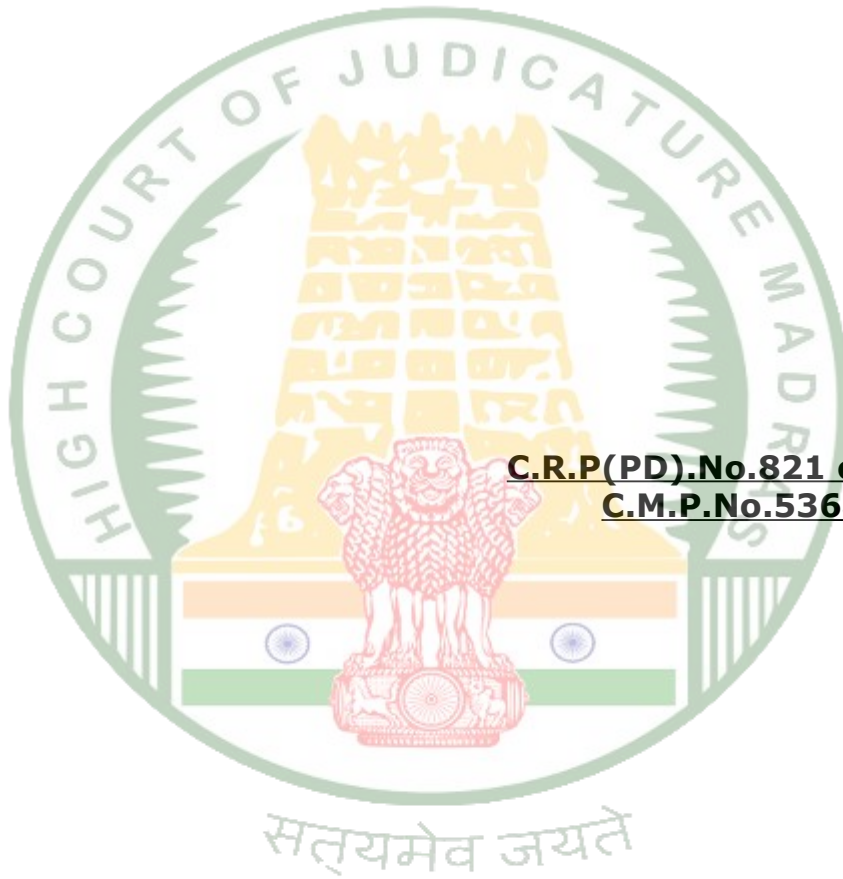
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Index : Yes/No
Speaking order/non-speaking order
To,
The Subordinate Judge,
Ranipet, Vellore

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P.T.ASHA, J.,

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