

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P(PD)No.4113 of 2013

and

M.P.No.1 of 2013

Duraisamy

.. Petitioner

Vs.

1. Thangavel

2. Shankar

3. Annadurai

4. Thangaraj

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, aggrieved by the order dated 05.01.2013 made in I.A.No.532 of 2012 in O.S.No.338 of 2005 on the file of the learned Principal District Munsif-Cum-Judicial Magistrate, Chengam.

For Petitioner : Mr.G.Karthikeyan

For Respondents : M/s.M.Sudha
for Mr.C.Munusamy

ORDER

This Civil Revision Petition has been filed aggrieved by the order dated 05.01.2013 made in I.A.No.532 of 2012 in O.S.No.338 of 2005 on the file of the learned Principal District Munsif-Cum-Judicial Magistrate, Chengam.

2. Aggrieved over the appointment of Advocate Commissioner by the Trial court to note down the physical feature of the suit property and file a report, the plaintiff has filed this revision petition. The suit itself filed by the plaintiff for declaration and for permanent injunction inter alia contending the suit property is absolutely belonging to the plaintiff by way of purchase dated 18.07.1974.

3. It is the contention of the plaintiff that ever since the petitioner purchased the suit property, the property is only a vacant site. The defendants disputed and submit the property is not a vacant site. There are constructions available and in respect of the same, an Advocate Commissioner has been appointed to note down the physical features to enable the court to adjudicate the issue between the parties.

4. The trial court taking in to consideration all the submissions of the respective parties, appointed an Advocate Commissioner to note down the physical features. Aggrieved by the same, the present civil revision petition is filed.

5. Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondent.

6. It is the contention of the learned counsel appearing for the petitioner that the petitioner has title over the suit property and the commissioner cannot be appointed to gather evidence. Hence, submitted that the order of the trial court suffers serious infirmity.

7. The learned counsel appearing for the respondent submitted that the trial court took note of the fact that mere appointment of the Advocate Commissioner to take note of the physical feature of the suit property will not affect the plaintiff in any manner. Hence, prayed for dismissed the application.

8. I have perused the order passed by the trial court and the suit property still is a vacant land. Whereas the contention of the

defendants is that the suit property already third party rights have created and they put up construction and in the suit property, buildings are available and it is not a vacant site. The trial court taking note of the submission of the respective parties, appointed the Advocate Commissioner. The Advocate Commissioner not appointed to gather evidence to find out the possession of the parties, whereas the Advocate Commissioner is appointed to note down the Physical feature of the property. In fact report by the Commissioner would certainly enable the Court to adjudicate the issue between the parties.

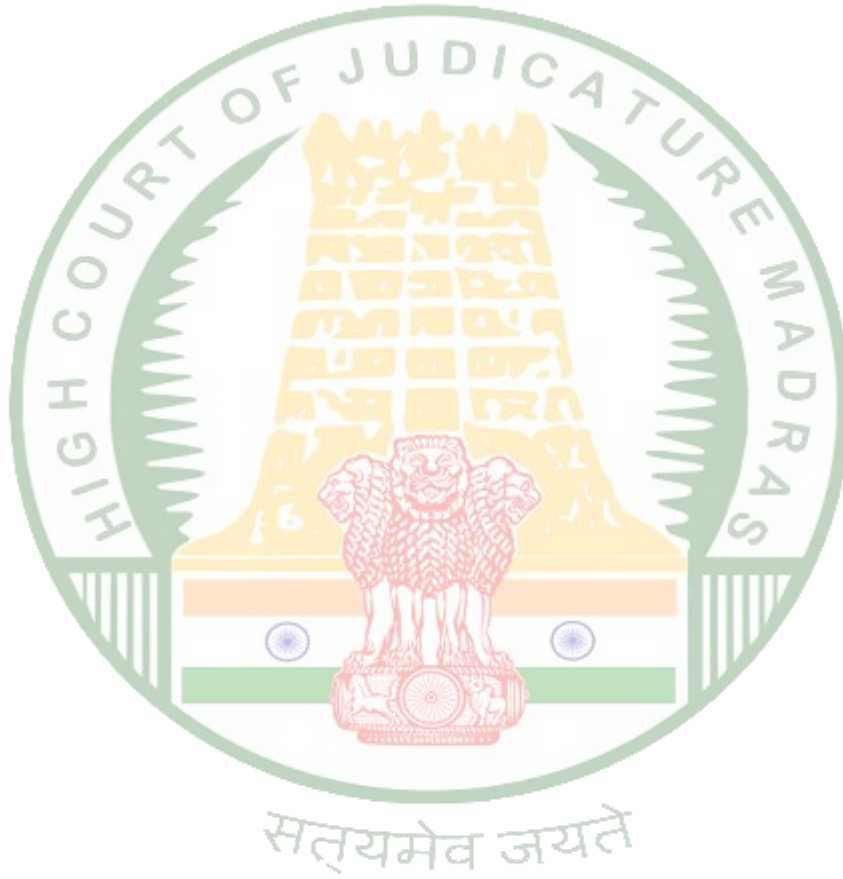
9. This court is of the view that the trial court order does not suffer the infirmity. Accordingly, the revision petition lacks merits and stands dismissed and the trial court is directed to dispose the suit within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

11.02.2019

Index: Yes/No
Speaking/ Non-Speaking
ssi

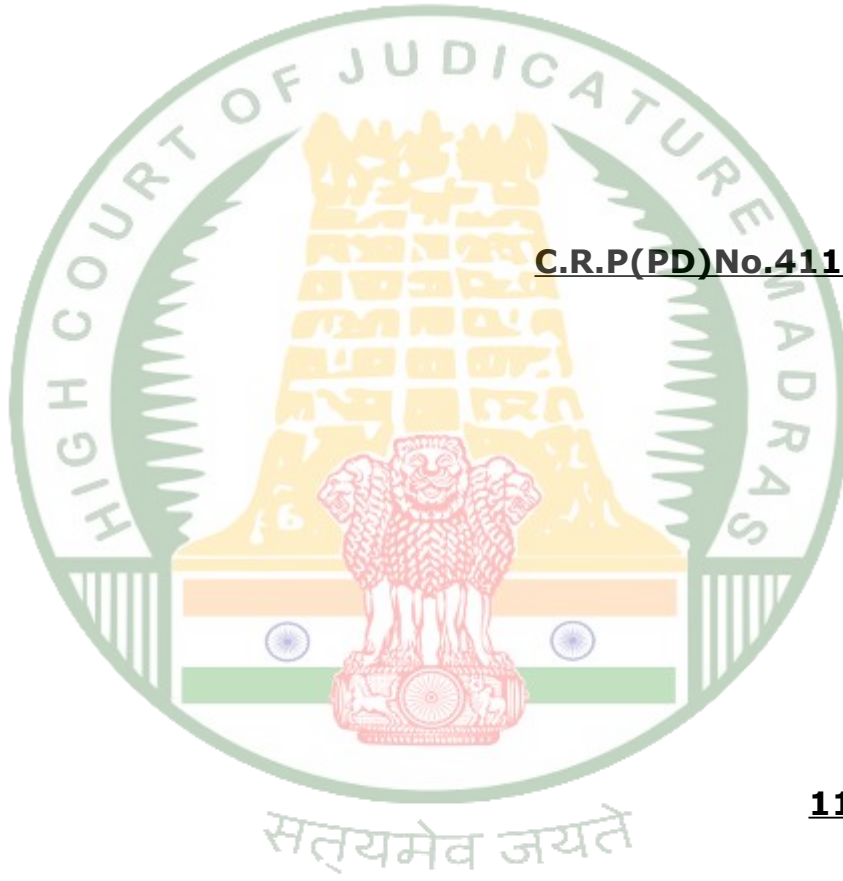
To

1. The Principle District Munsif-Cum-Judicial Magistrate, Chengam.
2. The Section Officer, VR Section, Madras High Court.



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N.SATHISH KUMAR, J.



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