

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P(PD)No.4407 of 2013

and

M.P.No.1 of 2013

P.Selvaraju

... Petitioner/Petitioner

Vs.

M/s.AVR SS Builders,
Rep.by its Managing Partner,
A.B.Sudarsanam,
No.29, Veerapandiyar Nagar,
1st Cross, Salem-636 004.

... Respondent/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 02.08.2013 made in I.A.No.119 of 2013 in O.S.No.38 of 2011 passed by the learned Principal Subordinate Judge, Salem and pleased to set aside the same.

For Petitioner : Mr.H.Nazirudeen

For Respondent : Mr.D.Shivakumaran

ORDER

This Civil Revision Petition has been filed to set aside the Order and decreetal order dated 02.08.2013 made in I.A.No.119 of

2013 in O.S.No.38 of 2011 passed by the learned Principal Subordinate Judge, Salem, against the dismissal of the application filed by the revision petitioner to appoint Advocate Commissioner to note down the physical features of the property.

2. The suit in O.S.No.38 of 2011, has been originally filed by the defendant for recovery of money, on the ground that despite construction made, the defendant has not paid the amount as per the agreement, and hence, the plaintiff laid a suit for recovery of money.

3. It is the contention of the defendant that he has paid the amount as per the agreement and there was a deviation by the plaintiff, while constructing the house and unless the deviation is noted, he would not be in a position to recover the money. Therefore he sought for appoint of Advocate Commissioner, but the trial Court dismissed the application.

4. Heard, the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondent and perused the entire records available.

5. The suit is based on the agreement between the parties to construct the building and the cause of action of the suit arose based on the agreement entered between the parties and it is a simple suit for money. Whether the agreement has been valid or not is the matter of evidence. Therefore, this suit cannot be converted into for some other purpose. It is for the plaintiff to establish the case by producing the documents. The defendant having admitted the agreement and the plan and he cannot seek an Advocate Commissioner to measure the property at this stage.

6. Therefore, this Court does not find any illegality or infirmity in the order passed by the trial Court. Hence, the Civil Revision Petition is dismissed. The trial Court is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also closed.

18.02.2019

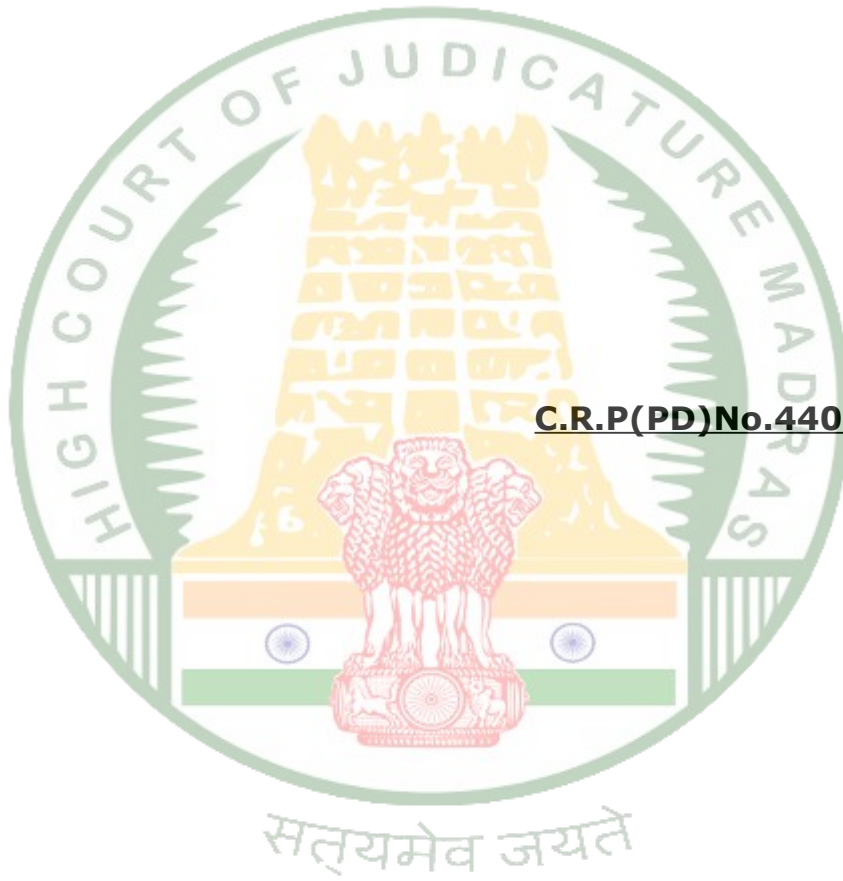
Index: Yes/No
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To

1. The Principal Subordinate Judge, Salem
2. The Section Officer, VR Section, Madras High Court.

N.SATHISH KUMAR, J.

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