

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2019

PRONOUNCED ON : .06.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P (PD).No.2624 of 2014

and

M.P.No.1 of 2014

Saroja Ammal

.. Petitioner/Defendant

vs

1.M.S.D.Thenraja Nadar

2.Vasuki

.. Respondents/Plaintiffs

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, setting aside the Fair and Decreetal Order dated 28.02.2014 and made in I.A.No.1705 of 2013 in O.S.No.599 of 2012 on the file of the Principle District Munsif Court, Alandur and to dismiss the same.

For Petitioner : Mr.S.Balasubramanian

For Respondents : No appearance

ORDER

Though notice has been served on the respondents/plaintiffs there is no representation on their behalf despite their name being printed in cause list. Therefore, the present Civil Revision Petition is taken up for hearing in their absence.

2.The petitioner is aggrieved by the fair and decretal order dated 28.02.2014 made in I.A.No.1705 of 2013 in O.S.No.599 of 2012 on the file of the Principal District Munsif Court, Alandur. By the impugned order, the Court has appointed an Advocate Commissioner to inspect the suit schedule property and give report.

3. The petitioner is the sole defendant in O.S.No.599 of 2012. The above suit was filed for a permanent injunction to restrain the petitioner/defendant or any other persons claiming through her from in any manner putting up any construction on the suit property and to direct the petitioner/defendant to pay the costs of the suit.

4. The petitioner/defendant filed her written statement on 26.02.2013. After the written statement was filed, the respondents/plaintiffs has filed

I.A.No.1705 of 2013 on 23.09.2013 for appointment of an Advocate Commissioner to inspect the suit schedule property and to give a report regarding the physical features of the suit schedule property after inspecting, measuring and noting down the existing physical features of the suit property. The court allowed I.A.No.1705 of 2013 vide impugned order dated 28.02.2014.

5. Aggrieved by the same, the petitioner/defendant has filed the present Civil Revision Petition. It is the case of the petitioner/defendant that she is an old lady and has been harassed by the respondents/plaintiffs by filing frivolous suit, taking advantage of her age and condition.

6. It is further submitted that the petitioner/defendant had earlier filed a suit in O.S.No.325 of 2009 before Sub Court, Tambaram wherein the respondents/plaintiffs were the 11th and 12th defendants.

7. The said suit was also decreed and a preliminary decree was passed on 28.03.2012. The court there allotted one-third share to the petitioner/defendant. Relevant portion of the decree order reads under:-

“13. According to the plaintiffs, the Mari Nattar agreed to sell his half share in the suit property entred into a Sale Agreement to his brother Ellappa Nattar in respect of the eastern portion allotted to him, and even before executing the Sale Deed he died leaving behind his only son viz., Madurai Nattar, and the said

Madurai Nattar being the sole legal heir of Mari Nattar, executed the Sale Deed in favour of Natesa Nattar on 15.04.1961 and hence the said Natesa Nattar become the absolute owner of the entire suit property, and was in possession and enjoyment of the same during his life time.

38. The preliminary decree of partition of first plaintiff's one-third share is passed and the defendants are restrained by means of permanent injunction from interfering with the first plaintiff's possession over the suit property, and the defendants 13 to 19 have no right to claim any share over the suit property. The suit is dismissed as against the second plaintiff. In view of the relationship between the parties they do bear their own cost."

8. The petitioner/defendant had also obtained an injunction restraining the respondents/plaintiffs from interfering with the possession of the property allotted to her.

9. The learned counsel for the petitioner/defendant submits that the suit has been filed for the entire extent of the property even though the preliminary decree has been passed giving one-third share to the petitioner.

10. It is further submitted that the two sale deeds pursuant to which the respondents/plaintiffs have based on the above suit is itself questionable as the vendors who are the sisters of the petitioner/defendant had no right to sell the property and had only life interest and it is only the grand children who have right to alienate under the property.

11. Therefore, during the life time of the petitioner/defendant, the petitioner/defendant cannot be disturbed or subjected to any constraint particularly in the light of preliminary decree passed in O.S.No.325 of 2009.

12. The learned counsel for the petitioner submits that the purpose of filing I.A.No.1705 of 2013 in O.S.No.599 of 2012 was to collect the evidence and to disturb the petitioner's/defendant's peaceful possession over the suit schedule property as is evident from the prayer in the above suit which is reads under:-

- “a) for a permanent injunction restraining the defendant, her men, agents, servants and any other person or persons claiming through her from in any manner putting up any construction work in the suit property;
- b) to direct the defendants to pay the plaintiffs the costs of the suit; and
- c) to grant such other reliefs may deem fit and proper

Schedule Property

All that piece and parcel of house and property situated at No.6/4B, Karayar Koil Street, Saint Thomas Mount, Chennai-600 016, Alandur Firka, Alandur Taluk, Kancheepuram District, comprised in Survey No.20, G.L.R.S.No.256/519, measuring to an extent 18241/2 Sq.ft., Bounded on

North by : Karayar Koil Street

South by : House belongs to Varadha Pillai
East by : Sembada Street and
West by : Property belongs to Sundara Nattar”

13. It is submitted even though the petitioner has obtained a preliminary decree and has been allotted one-third share in the suit schedule property, the respondents/plaintiffs were trying to stifle her rights over the property.

14. I have gone through the records and considered the arguments advanced.

15. By the impugned order, the court has merely appointed an Advocate Commissioner has not finalised the case.

16. The report of an advocate Commissioner will not prejudice the petitioner/defendant in any manner. The Advocate Commissioner has not been appointed for collecting evidence. In any event, merely because an Advocate Commissioner is appointed to give a report ipso facto does not mean that the suit will be decreed based on the report of the Advocate Commissioner. The reports of Advocate Commissioner at best is a mere piece of evidence and content of such report will be tested and subject to proof, admissibility and relevancy.

17. In my view, no prejudice or harm would be caused to the petitioner merely because an Advocate Commissioner has been appointed to give a report. The report of an Advocate Commissioner will at best assist the Court to come to a fair conclusion on facts.

18. Consequently, I am of the view that the present Civil Revision Petition is liable to be dismissed and it is hereby dismissed. No costs. Connected Miscellaneous Petition is also closed.

06.06.2019

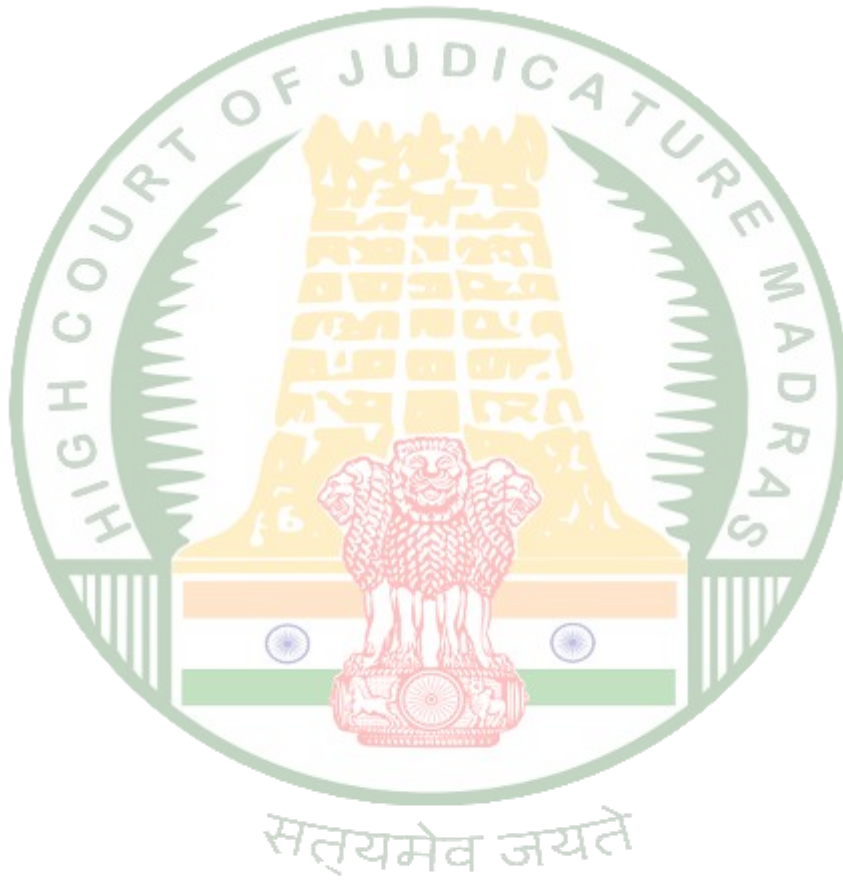
Index : Yes/No
Internet : Yes/No
Speaking : Non-speaking order
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To

1. Principle District Munsif Court,
Alandur.

2. The Section Officer,
V.R. Section, High Court, Madras.

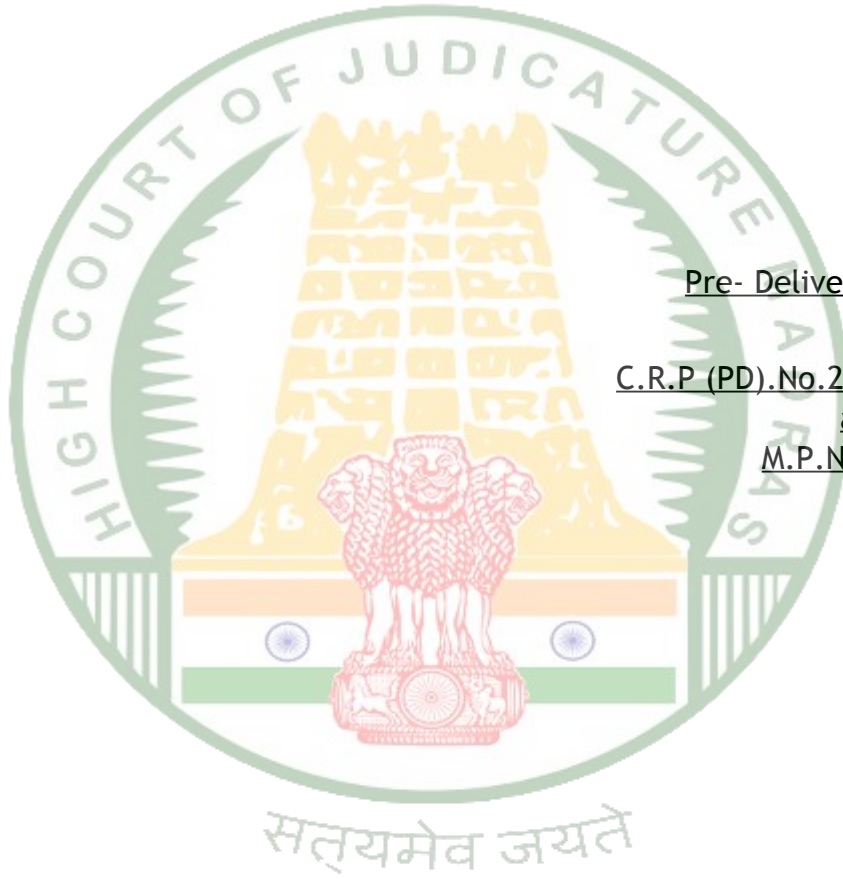
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C.SARAVANAN,J.

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Pre- Delivery Order in

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