

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2019

CORAM

The Hon'ble Mr.Justice R.PONGIAPPAN

C.R.P.(NPD) No.3956 of 2014
and
M.P.No.1 of 2014

S.Muralikumar ... Petitioner

Vs.

1.Selvamani

2.Mageswari

... Respondents

Prayer:-

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the order and decretal order dated 15.07.2014 made in I.A.No.3 of 2014 in C.M.A.No.2 of 2012, on the file of the Principal District Judge, Dharmapuri.

For Petitioner : Mr.S.Saravnakumar

For Respondent-1 : Mrs.M.Jayachandran

For Respondent-2 : No appearance

ORDER

Aggrieved over the order passed by the learned Principal District Judge, Dharmapuri, in Interlocutory Application No.3 of 2014, in Civil Miscellaneous Appeal No.2 of 2012, dated 15.07.2014, the petitioner herein, who is the appellant in the said Appeal has filed this Civil Revision Petition.

2. Based on the sale agreement, dated 23.10.1996, the 2nd respondent herein filed a suit in O.S.No.4 of 1999 and obtained a decree against the 1st respondent. Against which, the petitioner herein preferred C.M.A.No.2 of 2012 on the file of the Principal District Judge, Dharmapuri. During the pendency of the said Appeal, the petitioner herein filed an Interlocutory Application under order XXVI Rule 9 and Section 151 of CPC, to appoint a Court Commissioner, to visit the petition mentioned property and to note down the physical features of the property with the help of the Village Administrative Officer and Surveyor. After affording sufficient opportunities, the learned Principal District Judge, Dharmapuri, had dismissed the Petition filed by the petitioner by observing that, earlier,

when the suit related to CMA is pending, a petition has been filed in I.A.No.20 of 2013 in A.S.No.13 of 2012, for appointment of Advocate Commissioner, to measure the suit property. Further, it was observed that the said Application was dismissed by the Principal District Judge, Dharmapuri. Against which, the Petitioner filed C.R.P.No.825 of 2014 before this Court. This Court, after an elaborate enquiry, came to the conclusion that the dismissal order passed by the Principal District Judge is correct and dismissed the Civil Revision Petition. Only by stating the above said reason, the I.A.No.3 of 2014 filed by the petitioner was dismissed.

3. Aggrieved over the said findings of the Principal District Judge, the petitioner is before this Court with the present Civil Revision Petition.

4. Today, when the petition is taken up for hearing, the learned counsel appearing for the petitioner made a submission that, at the time of filing the suit the description of properties in the suit schedule are not correctly mentioned, and therefore, for correcting the measurements in respect to the suit schedule property, appointment of Advocate

Commissioner to measure the suit property with the help of Surveyor and other Revenue Officials is very much necessary.

5. Further, it is the specific contention of the learned counsel for the petitioner that, in case, if decree is passed in favour of the petitioner, it is difficult to realize the decree, because of the wrong description of the property in the suit schedule.

6. On the other hand, the learned counsel appearing for the first respondent would contend that the learned Principal District Judge rightly dismissed the I.A.No.3 of 2014 filed by the petitioner by holding that, the earlier application filed by the petitioner seeking for appointment of Court Commissioner, viz., I.A.No.20 of 2013 was dismissed by the Trial Court and when the matter went up before the High Court, by way of C.R.P.No.825 of 2014, the said dismissal order got confirmed by this Court by observing that appointment of Advocate Commissioner was not necessary in a suit for specific performance, and therefore, the said order passed by the High Court, dated 27.01.2014 was a res judicata. Therefore,

the learned counsel submitted that the order passed by the learned Principal District Judge, warrants no interference in this Revision Petition.

7. Heard the learned counsel for both the parties.

8. Apart from considering the arguments advanced by the learned counsel appearing on either side, for disposing this Civil Revision Petition it is necessary to see the background of the suit filed by the plaintiff. In fact, the suit has been filed for the relief of specific performance based on the sale agreement entered between 1st and 2nd respondents. Now, it is admitted on either side that the description of the property found in the sale agreement is the subject matter of the suit property, it is further admitted on either side that during the time of contesting the Appeal Suit in A.S.No.13 of 2012 filed by the petitioner herein, he has filed one Interlocutory Application in I.A.No.20 of 2013 for the relief of appointment of Court Commissioner to note down the physical features of the property and file report with plan. After enquiry, the said Application filed by the petitioner was dismissed on 27.01.2014. Aggrieved over the said order, the petitioner

herein filed C.R.P.No.825 of 2014 before this Court. This Court, after hearing both sides, concluded that as the Civil Revision Petition filed by the petitioner is against the principles laid down in a decision of Hon'ble Supreme Court rendered in **Union of India vs Ibrahim Uddin & another, reported in 2012(119) AIC 161(SC)**. As far as the present case is concerned, this Application has been preferred during the time of execution proceedings after the disposal of the first appeal filed by the petitioner in A.S.No.13 of 2012. Hence, this C.M.A is nothing but a continuation of the suit filed in O.S.No.4 of 1999, and therefore, already the issue raised in this application was decided by this Court in C.R.P.No.825 of 2014 by way of filing the present Revision Petition, he wanted an another order in respect to the same prayer as sought in the earlier CRP.

9. Furthermore, it is pertinent to mention here that this suit is for the relief of specific performance. Measuring the suit property is not at all necessary for proceeding with the suit and other proceedings. More than that, since the description of the property found in the sale agreement and the suit property is one and the same, it is not at all necessary to appoint any

Advocate commissioner to measure the property. It is for the plaintiff to prove his case before the Trial Court as to whether he is eligible for the relief prayed for. In other words, measuring the property is not at all necessary and therefore, this Court is of the opinion that there was no material defect found in the order passed by the learned Principal District Judge, Dharmapuri in I.A.No.3 of 2014 in C.M.A.No.2 of 2012.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

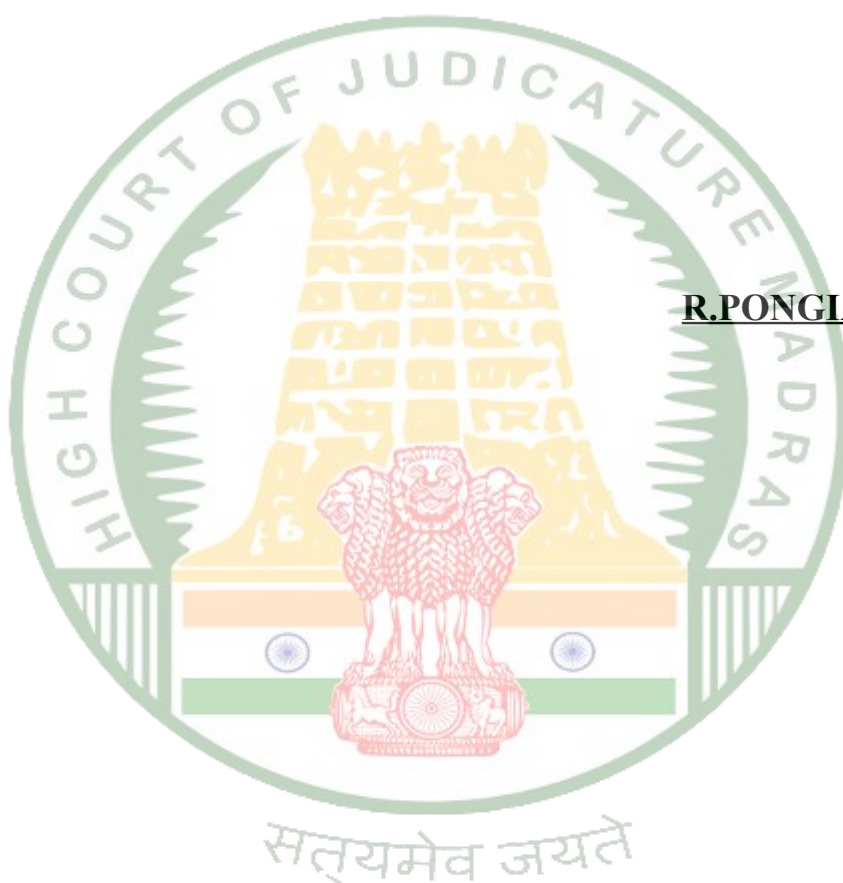
rri/sd.

17.09.2019

To
The Principal District Judge, Dharmapuri.

सत्यमेव जयते

WEB COPY



R.PONGIAPPAN. J.

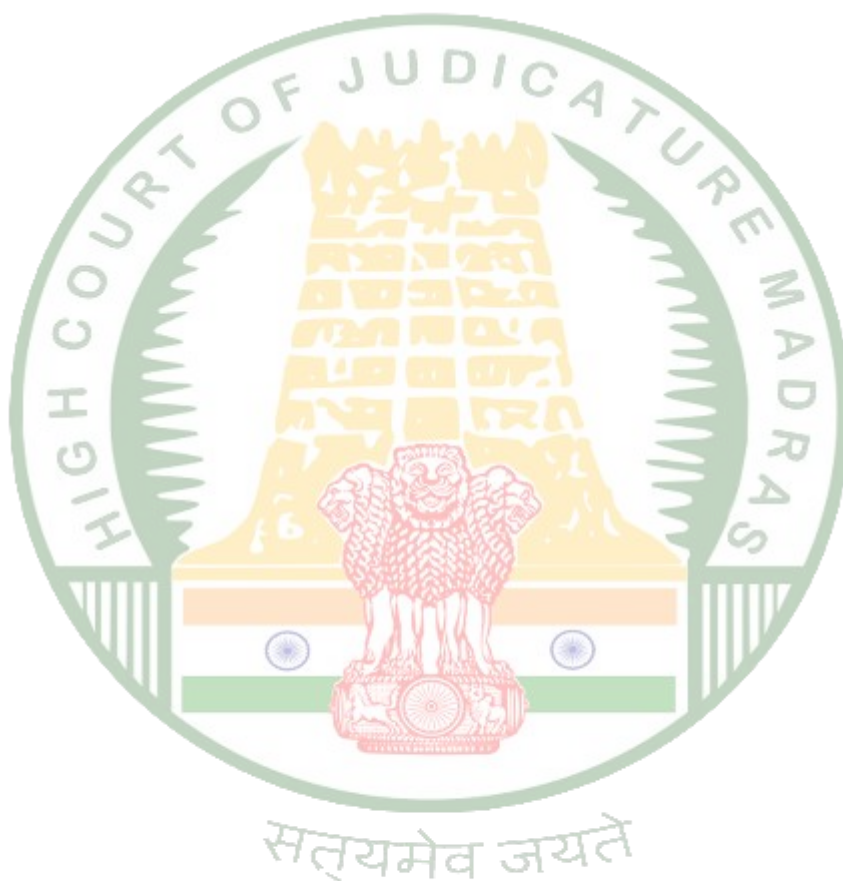
rri/sd

C.R.P.(NPD) No.3956 of 2014

and
M.P.No.1 of 2014

WEB COPY

17.09.2019



WEB COPY