

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 2999 of 2019

and

C.M.P. No. 19350 of 2019

1. T. Krishnasamy
2. C. Kannappan ... Petitioners

Vs.

K.R. Kandasamy (died)
K. Jayalakshmi (died)
1. Babu
2. K. Vidhya
3. K. Lalitha
4. K. Balakrishnan ... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 02.07.2019 in I.A. No. 4 of 2019 in O.S. No. 45 of 2018 on the file of the learned Subordinate Judge, Mettupalayam.

For Petitioners : Mr. G. Karthikeyan
For Respondents : Mr. S. Gunalan

ORDER

This Civil Revision Petition has been filed against the fair and decretal order in I.A. No. 4 of 2019 in O.S. No. 45 of 2018, by order dated 02.07.2019, by learned Subordinate Judge, Mettupalayam.

2. The revision petitioners were the plaintiffs before the trial Court who filed an application in I.A. No.4 of 2019 for appointment of Advocate Commissioner under Order 26 Rule 9 of Civil Procedure Code, to visit the suit property for the purpose of noting the physical features and to measure the same with the assistance of the Taluk surveyor.

3. The main suit was filed by the petitioners / plaintiffs for specific performance on the strength of the alleged sale agreement between the petitioners and defendants. In the suit, the witnesses on the side of the plaintiffs have been examined and it is for the defendants side witnesses, where DW1 is already in the witness box for cross-examination, at this stage, this petition has been filed.

4. Since the prayer in the suit is for specific performance on the strength of the agreement for sale between the parties and pursuant to which, evidence would be let in, and based on which, the trial Court would ultimately decide whether the petitioners / plaintiffs are entitled to get the decree of specific performance in their favour or not.

5. In this regard, the Advocate Commissioner's report after having noted down the physical features of the property would no way helpful the plaintiffs to establish the case and such findings given by the Advocate Commissioner on the physical features of the property may not have any impact on the decision making process of the trial Court in the issue of specific performance for which the suit have been laid.

6. Therefore, the lower Court after having considered the plea raised by the petitioners / plaintiffs and resistance made by the respondents / defendants has dismissed the said I.A., of course rightly in the impugned order and after gone through the same, this Court finds no reason to interference.

7. In that view of the matter, this Civil Revision fails and hence, it is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index: Yes / No

Speaking order / Non speaking order

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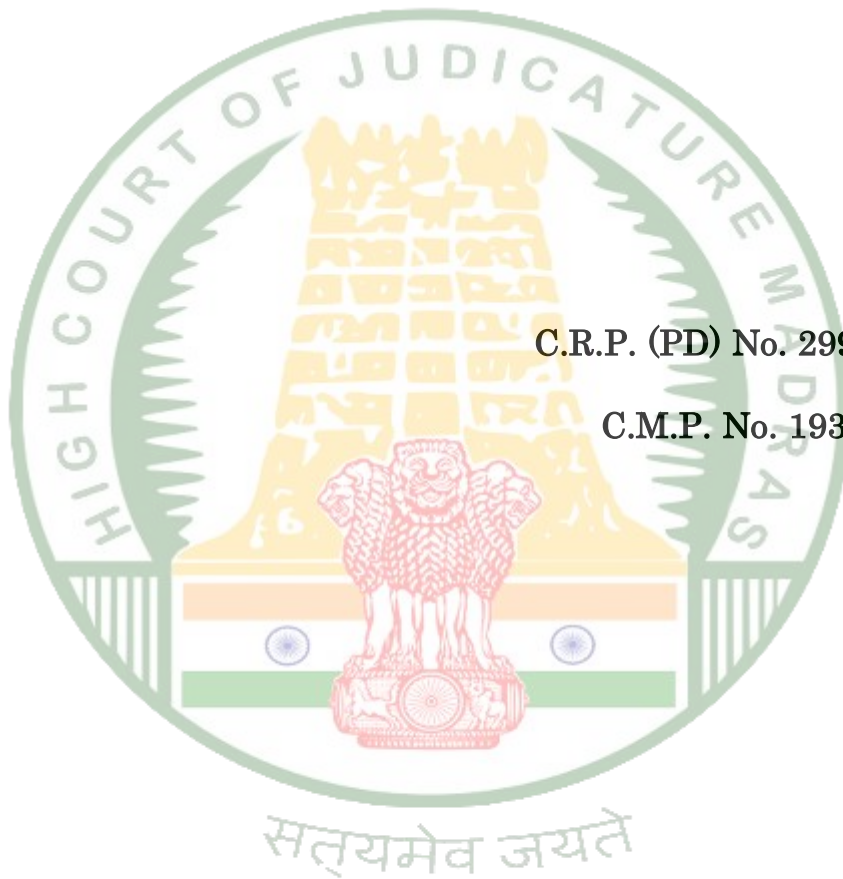
C.R.P. (PD) No. 2999 of 2019

R.SURESH KUMAR, J.

vji

To

The learned Subordinate Judge,
Mettupalayam.



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