

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.3878 of 2018
and
C.M.P.No.21581 of 2018

1.K.Ayithammal
2.K.Kannan
3.K.Sekar

...Petitioners

Vs

V.Anthoniyammal

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order and decretal order dated 28.06.2018 made in I.A.No.13 of 2018 in A.S.No.80 of 2016 on the file of the learned II Additional Subordinate Judge, Villupuram.

For Petitioners : Mr.R.Raja Karthikeyan

For Respondent : Mr.C.Munusamy

ORDER

The above Civil Revision Petition is filed challenging the order of dismissal passed by the learned II Additional Subordinate Judge, Villupuram, in I.A.No.13 of 2018 in A.S.No.80 of 2016.

2.I.A.No.13 of 2018 has been filed by the appellants/petitioners for appointment of an Advocate Commissioner to inspect and measure the suit "A" schedule 3rd item of the property, to find out the existence of the newly dug well, as well as the suit "B" schedule properties with the assistance of a qualified Revenue Surveyor to note down the physical features and file a report and plan.

3.The facts in brief are as follows:

The plaintiffs/appellants herein had filed the suit O.S.N0.254 of 2010 on the file of the learned District Munsif, Thirukovilur, for a declaration and for recovery of possession of

the 3rd item of the "B" schedule property. The description of property in the suit schedule does not contain any details as to the existence of the well or otherwise. It appears that the suit has been dismissed by the learned District Munsif, Thirukovilur, by a Judgment and Decree dated 21.08.2015. Challenging the said Judgment and Decree, the revision petitioner has filed A.S.No.80 of 2016 on the file of the learned II Additional Subordinate Judge, Villupuram. Pending the appeal, the impugned petition has come to be filed and the same has been dismissed.

4.The learned counsel appearing for the petitioners would contend that an encroachment has taken place pending the suit and in the evidence, the respondent has claimed his right over the well and this fact can only be ascertained, if an Advocate Commissioner is appointed to inspect the suit property.

5. Heard Mr.R.Raja Karthikeyan, learned counsel appearing for the petitioners and Mr.C.Munusamy, learned counsel appearing for the respondent and perused the material available on record.

6. From a reading of the Complaint, it is clear that the suit has been filed for recovery of possession and that the encroachment has been taken place when the suit has been filed. That apart, the schedule of property does not contain any reference to the suit well.

Considering the fact that the suit is one for declaration and recovery of possession and that the disputed well is said to be situate in I.A.No.69/7A1, in the event of the appellants succeeding in the Appeal, it automatically follows that if the well is in existence in the said survey number, they will be entitled for the same. There is no necessity to appoint an Advocate

Commissioner to note down the physical features or existence of the well and the Advocate Commissioner's report and plan cannot be a substitute for other evidence. The learned II Additional Subordinate Judge, Villupuram, has rightly dismissed I.A.No.13 of 2018 in A.S.No.80 of 2016. This Civil Revision Petition lacks merits and accordingly, the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.02.2019

Index : Yes/No
Internet : Yes/No
mps

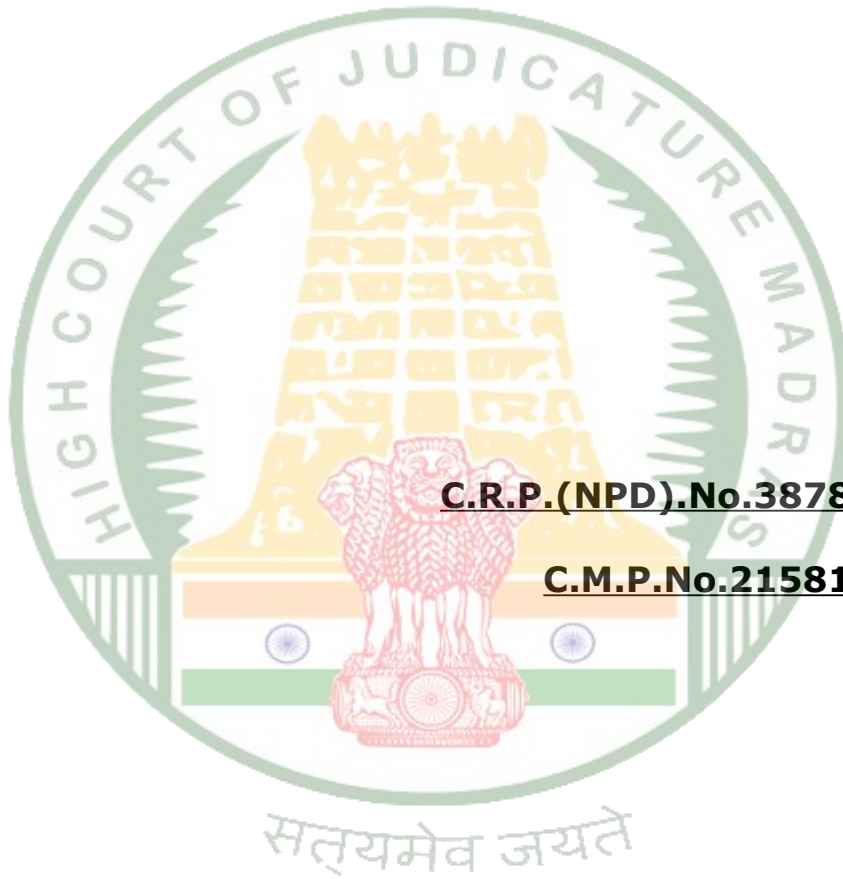
To

The II Additional Subordinate Judge,
Villupuram.

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P.T. ASHA, J,

mps



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