

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.305 of 2018 &
CMP No.1652 of 2018

Indhirani

... Petitioner

Vs.

1. M/s.Venkateswara Finance,
Proprietor K.Vijayabaskar,
No.38, Sivanar Main Road,
Gugani, Salem – 6.

2. Kalavathy

... Respondents

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 03.01.2018 passed in I.A.No.665 of 2017 in O.S.No.139 of 2004 on the file of the III Additional District Court, Salem, Salem District.

For Petitioner : Mr.C.Prakasam

ORDER

The 13th defendant in O.S.No.139 of 2004 has come up with this revision challenging an order by the trial Court, refusing to appoint a commissioner to inspect the suit property, to note down the physical features and to fix the market value of the suit property as on 1997 and as on today and file a report with plan and valuation particulars.

2. The suit in O.S.No.139 of 2004 is one for specific performance. The description of property in the suit shows that the subject matter of the agreement is a three storied terraced building. The application for Commissioner is filed claiming that the PW1 has deposed that it is a tiled house. The defendants would contend that the building in the suit property consists of five stories and not three stories as claimed by the plaintiff in the description of the property. Even if the building is a three storied building, it would be of a value of not less than Rs.70 lakhs, even in the year 1997. Therefore, according to the defendants, the valuation set out in the agreement is low and hence the necessity for appointment of a commissioner.

3. The trial Court has rightly rejected the application concluding that in a suit for specific performance, the physical features of the property as well as the valuation of the property are wholly irrelevant. The trial Court has rightly held that the only issues that could be adjudicated upon in a suit for specific performance is about the truth and validity of the agreement and whether the plaintiff is entitled to specific performance or not. All other issues are foreign to the scope of the very suit. On the said findings, the learned trial Judge dismissed the application.

4. I have heard Mr.C.Prakasam, learned counsel appearing for the petitioner.

5. Mr.C.Prakasam, learned counsel appearing for the petitioner would vehemently contend that the Court erred in dismissing the application for appointment of a Commissioner as it would amount to denial of an opportunity to the petitioner to place the best evidence regarding the valuation of the suit property.

6. I am unable to countenance the said submission of Mr.C.Prakasam. As already stated the suit is one for specific performance. The Court is not concerned about the valuation of the building or the land,

beyond what is stated in the agreement. This Court and the Hon'ble Supreme Court have repeatedly pointed out that the fairness of the sale price cannot be a ground either to accept or to reject the claim for specific performance.

7. In view of the above, I do not think that the trial Court can be faulted for rejecting an application filed for appointment of Commissioner to fix the value of the suit property in the suit for specific performance. I do not see any merit in the Civil Revision petition. Therefore the Civil Revision petition is dismissed confirming the order of the trial Court. No costs. Consequently, connected miscellaneous petition is closed.

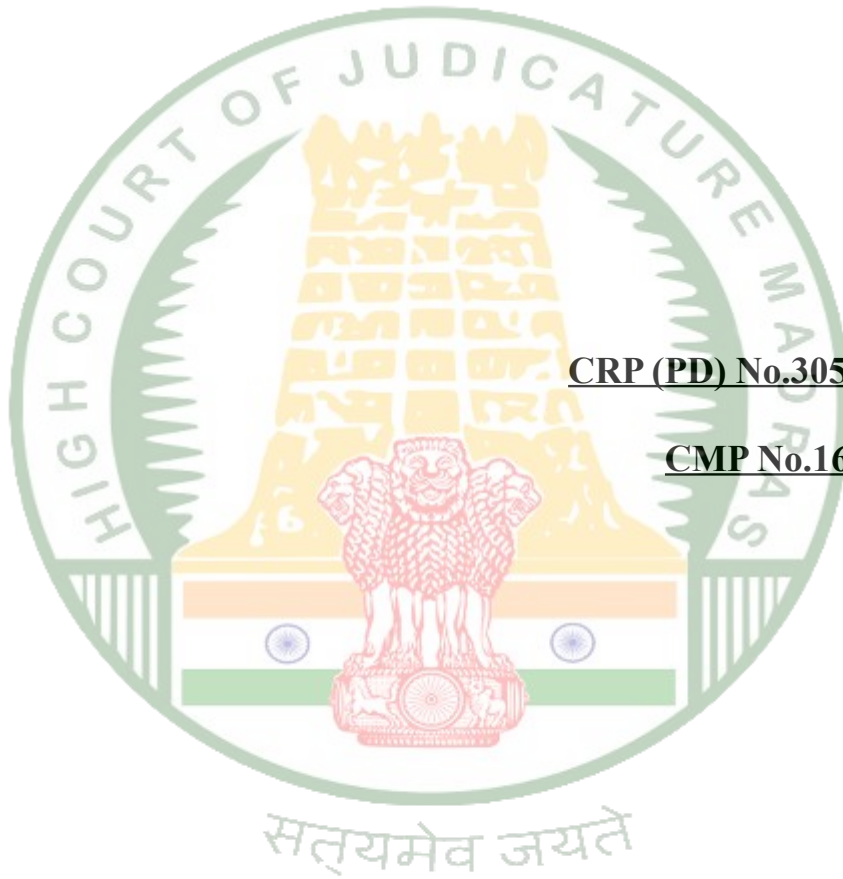
28.08.2020

vum
Index: No
Speaking order

To
The III Additional District Court,
Salem, Salem District.

R.SUBRAMANIAN, J.

vum



CRP (PD) No.305 of 2018 &

CMP No.1652 of 2018

WEB COPY

28.08.2020