

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4667 of 2017

Rajinikumari

.. Petitioner

Vs.

V.M.Dhandapani

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 02.06.2017 made in I.A.No.7 of 2017 in O.S.No.269 of 2013 on the file of the Sub Court, Poonamallee.

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For Petitioner : Mr.P.Thirupathi Raj

For Respondent : Mr.A.Ilaya Perumal

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).)

The Civil Revision Petition is filed against the fair and decretal order dated 02.06.2017 made in I.A.No.7 of 2017 in O.S.No.269 of 2013 on the file of the Sub Court, Poonamallee.

2.The petitioner is the plaintiff and respondent is the defendant in O.S.No.269 of 2013. The petitioner filed the said suit for declaration, recovery of possession and mandatory injunction. According to the petitioner, she is the absolute owner of the property measuring 2400 sq.ft. in S.No.83, Vanagaram Village described in the 'A' schedule property in the plaint. The respondent, who is the owner of the adjacent property has encroached 337.5 sq.ft., a portion of “A” schedule property belonging to the petitioner and erected six pillars.

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2(i).The respondent filed I.A.No.757 of 2014 under Order VII Rule 11 of C.P.C. to reject the plaint. The petitioner filed counter affidavit and

opposed the said application. The learned Judge by order dated 03.02.2016 considering the averments made in the affidavit, counter affidavit and the documents marked, dismissed the said I.A.

2(ii).The petitioner filed I.A.No.7 of 2017 under Order VII Rule 14 of C.P.C. to receive the documents and permit the petitioner to mark the same in the suit. According to the petitioner, she filed four documents along with plaint. She further submitted that she filed present I.A. to receive 13 documents, which were marked as Exs.R1 to R5 and R7 to R14 in I.A.No.757 of 2014 filed by the respondent to reject the plaint and another 13 documents mentioned in I.A.No.7 of 2017 are necessary to prove her case. The petitioner further stated that if the said application is not allowed, she would be put to irreparable loss and hardship. The respondent in the said I.A., filed counter affidavit and stated that the documents now sought to be filed by the petitioner cannot be permitted to mark, as there was a prohibition by order of this Court dated 05.11.2013 in W.P.No.12209 of 2013 and order dated 03.08.2015 in

W.P.No.23486 of 2015, wherein this Court directed the learned trial Judge to decide the suit on its own merits without being influenced by the revenue records. In view of the order of prohibition of this Court, the petitioner is not entitled to mark the documents and prayed for dismissal of the said I.A. The learned Judge considering the pleadings, materials on record as well as the orders of this Court in the writ petitions, dismissed I.A.No.7 of 2017.

3. Against the said fair and decretal order dated 02.06.2017 made in I.A.No.7 of 2017 in O.S.No.269 of 2013, the petitioner has come out with the present Civil Revision Petition.

4. The learned counsel appearing for the petitioner contended that the petitioner purchased the property by sale deed dated 29.09.2000, the defendant encroached 337.5 sq.ft. in the said property and tried to put up the construction in the suit property. The petitioner gave a complaint to the Police and the defendant stopped the construction. The respondent

filed O.S.No.80 of 2010 on the file of the Additional District Munsif Court, Poonamallee and obtained exparte interim injunction. Based on the interim injunction, the respondent put up compound wall over the encroached area of the petitioner and subsequently, he was not ready to proceed the suit further and the said suit was dismissed for default on 23.01.2014. The respondent has not taken any steps to restore the said suit till date. The learned counsel for the petitioner further submitted that 13 documents now sought to be marked by the petitioner were already marked as Exs.R1 to R5 and R7 to R14 in I.A.No.757 of 2014 filed by the respondent to reject the plaint and additional 13 documents mentioned in the petition to be marked are vital to prove the case of the petitioner. The documents now sought to be marked are only Court documents. The learned Judge misunderstood the orders passed by this Court in the writ petitions and for erroneous reason, dismissed I.A. and prayed for allowing this Civil Revision Petition.

5.The learned counsel appearing for the respondent contended that there was a prohibition order passed by this Court in the two writ petitions and this Court directed the learned trial Judge to decide the suit independently on its own merits without being influenced by the revenue records. In view of the same, the petitioner is not entitled to mark the documents. The learned Judge rightly considered the orders passed by this Court in the two writ petitions and dismissed I.A.No.7 of 2017. There is no error in the order of the learned Judge and prayed for dismissal of this Civil Revision Petition.

6.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the materials on record.

7.From the materials available on records, it is seen that the petitioner has marked Exs.R1 to R14 in I.A.No.757 of 2014 filed by the respondent. Subsequently, the petitioner has filed the present I.A.No.7 of 2017 for marking the documents Exs.R1 to R5 and R7 to R14 in the suit

and additional 13 documents mentioned in I.A.No.7 of 2017 in the suit. The respondent objected the said I.A. on the ground that this Court by the orders dated 05.11.2013 in W.P.No.12209 of 2013 and 03.08.2015 in W.P.No.23486 of 2015, directed the learned trial Judge to decide the suit independently without being influenced by the revenue records. In view of the same, the learned trial Judge dismissed I.A. filed by the petitioner.

8.From the list of documents mentioned in the affidavit filed in I.A.No.7 of 2017, it is seen that apart from the documents relating to the revenue proceedings, the plaintiff has also sought to mark other documents. The learned Judge has not considered whether the documents, which do not relate to the revenue records can be marked or not. In view of the failure on the part of the learned Judge, the impugned order dated 02.06.2017 made in I.A.No.7 of 2017 is liable to be set aside and is hereby set aside. I.A. is remanded to the learned Judge for the limited purpose to consider whether the documents apart from the revenue records can be permitted to be marked or not.

9. With the above direction, the Civil Revision Petition stands disposed of. No costs.

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Index : Yes/No
Internet : Yes/No
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To
The Subordinate Judge
Poonamallee.

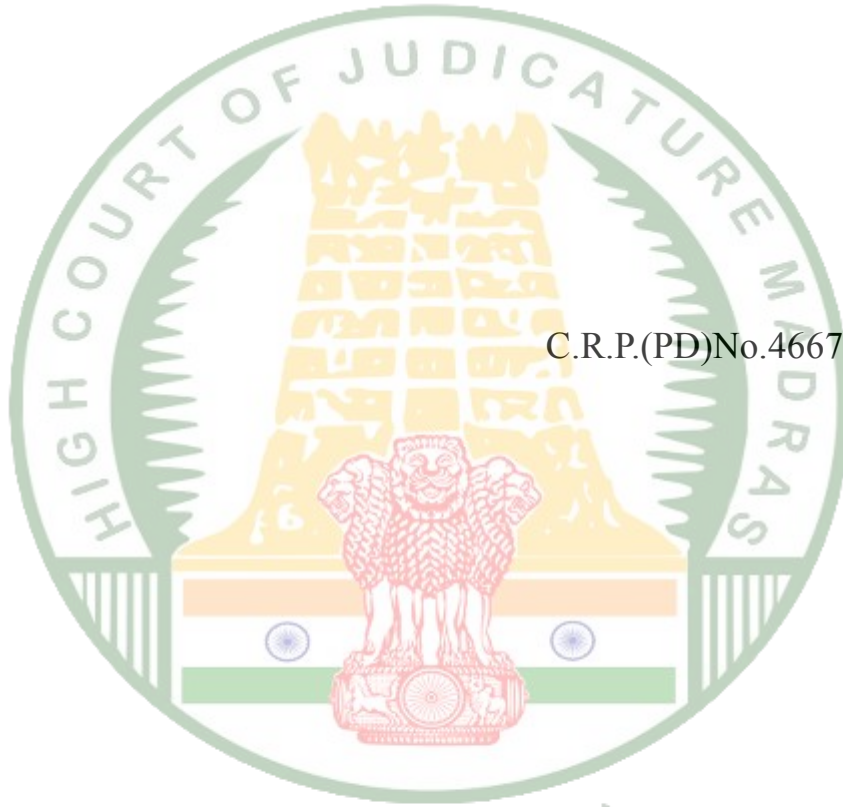


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V.M.VELUMANI, J.

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