

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP (PD) No.673 of 2017
and
CMP.No.3414 of 2017

Sakthivel Raja,
S/o.P.Nallasamy

... Petitioner / Plaintiff

Vs.

1.Sarasu,
S/o.Late Palanisamy

2.Poongodi,
W/o.Sekar

3.Sumathi,
W/o.Paramasivam

4.Santhi,
W/o.Baskaran

5.Malar @ Jagadeeswari,
W/o.Ekambaramoorthy

...Respondents / Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 22.08.2016 made in I.A.No.239 of 2016 in I.A.No.942 of 2013 in O.S.No.484 of 2013 on the file of the II Additional District Munsif Court, Erode and to set aside the same.

For Petitioner : Mr.S.Kaithamalai Kumaran

For R1 to R4 : Mr.L.Mouli

For R5 : No appearance

ORDER

(This case has been heard through video conference)

The Civil Revision Petition has been filed by the petitioner/plaintiff seeking to set aside the fair and final order dated 22.08.2016 in I.A. No. 239 of 2016 in I.A. No. 942 of 2013 in O.S.No.484 of 2013 passed by the II Additional District Munsif Court, Erode.

2.The brief facts of the case is that the Petitioner/Plaintiff had filed O.S. No. 484 of 2013 before the District Munsif Court, Erode under Order VII Rule I of the Code of Civil Procedure, against the respondents/defendants seeking for permanent injunction restraining the defendants, their men, agents, assignees etc., from in any way and any manner either trespassing into the suit properties or disturbing the peaceful possession and enjoyment of the plaintiff over the suit properties. During the pendency of the suit, the petitioner/plaintiff

filed and application in I.A. No. 239 of 2016 under Order XXVI Rule 9 and Section 151 of the Code of Civil Procedure, 1908, seeking a direction to the Advocate Commissioner to re-visit the suit property and to give a report whether the suit property was existing as a single unit or as multiple unit. The respondents/defendants had filed a counter stating that the petitioner/plaintiff had earlier filed I.A. No. 942 of 2013 seeking to appoint an Advocate Commissioner to inspect the entire physical features in and around the suit property and the earlier application was allowed on 06.12.2013. Based on which, an Advocate Commissioner was appointed and he had inspected the suit premises and given a report dated 06.01.2015. When that being so, the present I.A. No. 239 of 2016 seeking for re-visitation of the suit property by the Advocate Commissioner had been deliberately filed to evade the commencement of trial. The Trial Court after hearing both parties, finding that already an opportunity was given to the petitioner/plaintiff in I.A. No. 942 of 2013 pursuant to which, an Advocate Commissioner was appointed and that he had also filed a report dated 06.01.2015 and further finding that the present I.A. No. 942 of 2013 had been deliberately filed to evade the commencement of trial, had dismissed I.A. No. 239 of 2016 by order dated 22.08.2016. Against which, the present Civil Revision Petition has been filed.

3.The learned counsel appearing for the petitioner/plaintiff would submit that the earlier Advocate Commissioner's Report does not state anything as to whether the suit property is a single unit or multiple unit and thereby, there was necessity for the Advocate Commissioner to re-visit and note down the physical features of the suit property and that is the reason why the second application has been filed. Whereas, the Trial Court without taking into consideration the need and necessity for the Advocate Commissioner to re-visit the suit property, had dismissed the application without proper application of mind and thereby, the present Civil Revision Petition has been filed. However, he would further submit that in this Civil Revision petition, interim stay was already granted only for a period of two weeks from 20.02.2017 and subsequently, it was not extended any further and hence, the Trial Court has also commenced trial.

4.The leaned counsel appearing for the respondents/defendants would vehemently oppose stating that only on the instance of the petitioner/plaintiff, the Advocate Commissioner was earlier appointed for noting down the physical features of the suit property and he has also given a detailed Report dated 06.01.2015 regarding the same. He would further submit that the petitioner/plaintiff did not oppose the Advocate Commissioner's Report and

did not make any objection to it and he had accepted the Advocate Commissioner's Report and that the present revision petition had been deliberately filed to evade the commencement of trial. The Trial Court rightly finding that the application has been filed only to delay the commencement of trial, had dismissed the application. He would further submit that if at all the petitioner/plaintiff has any grievances in the Advocate Commissioner's Report dated 06.01.2015, he is entitled to cross examine the Advocate Commissioner at the relevant time and that even the present revision petition seeking for a direction directing the Advocate Commissioner to re-visit the scheduled mentioned suit property is only to delay / protract the process of trial.

5. Heard the counsels and perused the materials placed on record.

6. On the earlier application filed by the petitioner/plaintiff in I.A.942 of 2013, an Advocate Commissioner was appointed and he has visited the suit premises and filed a detailed report on 06.01.2015. The Advocate Commissioner's Report has been taken by the Court and the petitioner/plaintiff had not made any objection and further, a subsequent application has been filed in I.A.No.239 of 2016 on 12.04.2016 and by order dated 22.08.2016, the trial Court had dismissed the said application by giving its finding that the

application in I.A.No.239 of 2016 has been filed deliberately to evade the commencement of trial and that there was no need or necessity for the Advocate Commissioner to re-visit the scheduled mentioned property. This Court is of the opinion that a detailed report has been given by the Advocate Commissioner and that it has not been objected by the petitioner/plaintiff. This Court is of the further opinion that there is no need or necessity for the Advocate Commissioner to re-visit the schedule mentioned property and if at all the petitioner/plaintiff has any objection to the Advocate Commissioner's Report, he can very well examine the Advocate Commissioner based on the earlier report dated 06.01.2015. The revision lacks merits and deserves to be dismissed.

7.With the above discussions, the Civil Revision Petition stands dismissed. The order dated 22.08.2016 in I.A. No. 239 of 2016 in I.A. No. 942 of 2013 in O.S.No.484 of 2013 passed by the II Additional District Munsif Court, Erode is hereby confirmed. Consequently, the connected miscellaneous petition is also dismissed. No costs.

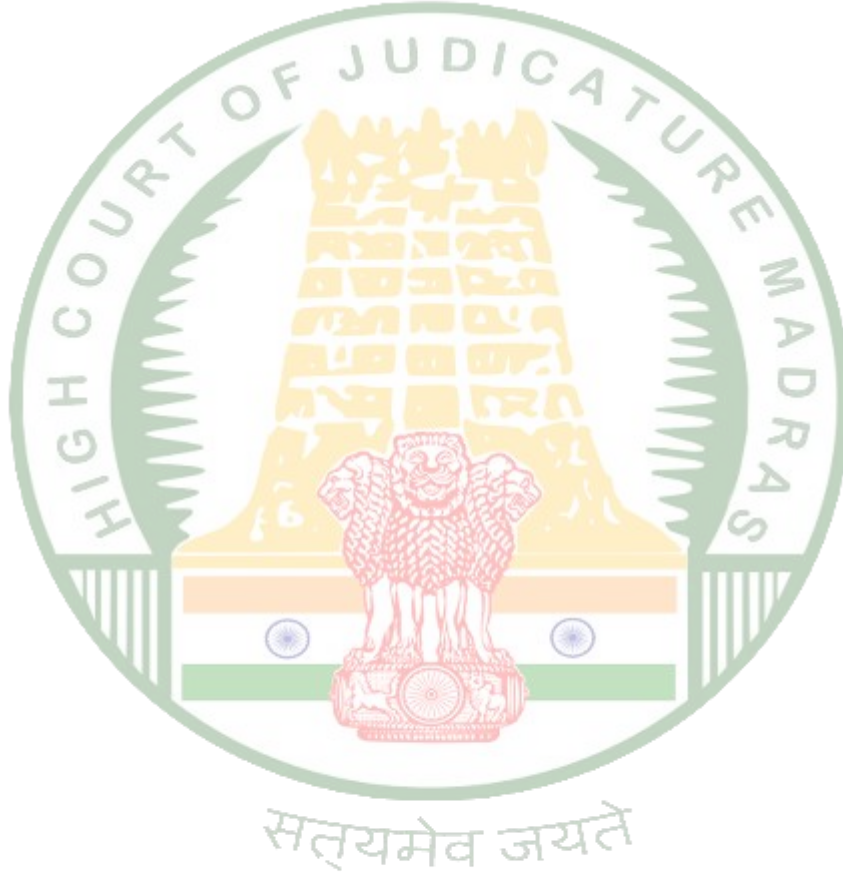
15.04.2021

Index:Yes/No
Internet:Yes/No
ssi

To

1.The II Additional District Munsif Court, Erode.

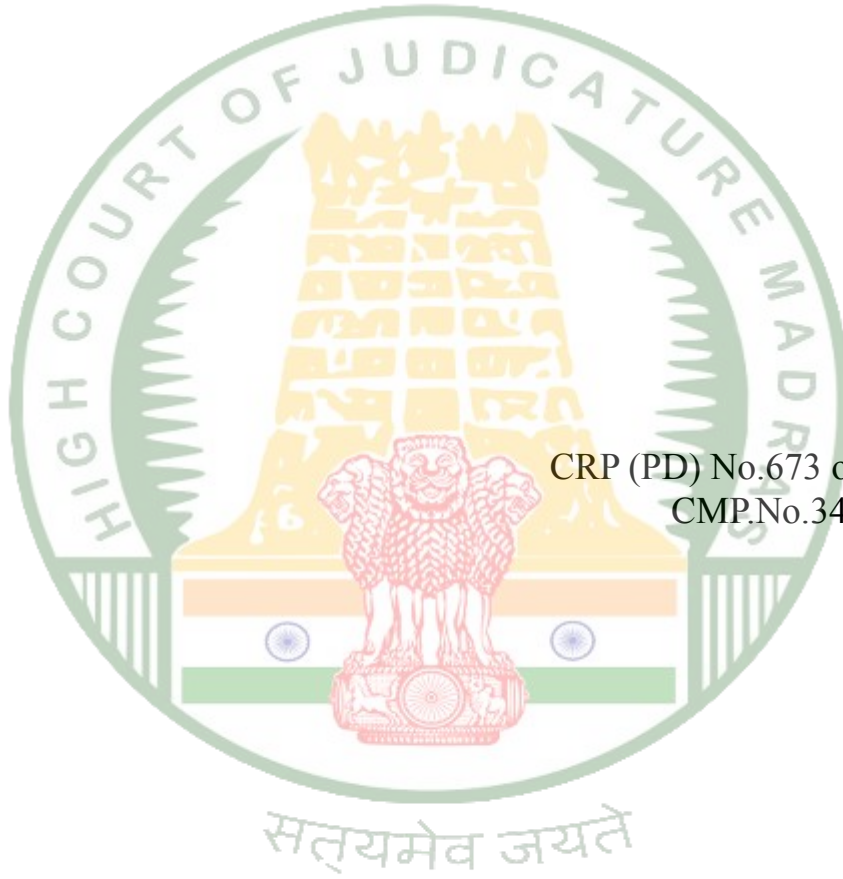
2.The I Additional District Munsif Court, Erode.



WEB COPY

A.D.JAGADISH CHANDIRA,J.,

ssi



CRP (PD) No.673 of 2017 and
CMP.No.3414 of 2017

WEB COPY

15.04.2021