

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2015

CORAM:

THE HON'BLE MR.JUSTICE D.HARIPARANTHAMAN

C.R.P.Nos.2582 & 3001 of 2015

and

M.P.No.1 of 2015

C.R.P.No.2582 of 2015

Mohamed Rabeek

.. Petitioner/Petitioner/Respondent/
Defendant

Vs.

Haja Mohaideen

.. Respondent/Respondent/Petitioner/
Plaintiff

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decreetal order dated 16.06.2015 made in I.A.No.576 of 2014 in I.A.No.577 of 2014 in O.S.No.89 of 2014 on the file of the III Additional District and Sessions Court, Cuddalore at Virudhachalam.

For Petitioner : Mr.G.Surya Narayanan

For Respondent : Mr.D.Shivakumaran

C.R.P.No.3001 of 2015

Mohamed Rabeek

.. Petitioner/Respondent/Defendant

Vs.

Haja Mohaideen

.. Respondent/Petitioner/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decreetal order dated 16.06.2015 made in I.A.No.577 of 2014 in O.S.No.89 of 2014 on the file of the III Additional District and Sessions Court, Cuddalore at Virudhachalam.

For Petitioner : Mr.G.Surya Narayanan

For Respondent : Mr.D.Shivakumaran

C O M M O N O R D E R

The revision petitioner is the defendant in O.S.No.89 of 2014 on the file of the III Additional District and Sessions Court, Cuddalore at Virudhachalam. It is a suit for recovery of money.

2. The plaintiff therein filed an application under Order 38 Rule 5 CPC for attachment of the petition scheduled property of the revision petitioner/tenant.

3. It is not in dispute that the revision petitioner filed his affidavit of undertaking dated 07.08.2014 stating that he would not alienate the petition scheduled property in I.A.No.576 of 2014.

4. In spite of such an undertaking affidavit, the Trial Court has passed an order dated 16.06.2015 in I.A.No.577 of 2014 in O.S.No.89 of 2014 making the attachment absolute. Hence, the revision petitioner has preferred these Civil Revision Petitions.

5. The learned counsel for the respondent/plaintiff would submit that the order of the Trial Court could be modified and this Court can accept the undertaking affidavit and further, submitted that the revision petitioner may also be directed to file Form 6 Appendix f as prescribed under Order 38 Rule 5 CPC.

6. According to the learned counsel for the respondent/plaintiff, if the prescribed form is filed, then based on the undertaking affidavit already filed, the order of the Trial Court can be modified accepting the undertaking.

7. In these circumstances, I am inclined to dispose of the Civil Revision Petitions modifying the orders passed by the Trial Court dated 16.06.2015 in I.A.No.576 of 2014 in I.A.No.577 of 2014 in O.S.No.89 of 2014 and in I.A.No.577 of 2014 in O.S.No.89 of 2014 with a direction to the revision petitioner to submit Form 6 Appendix f as prescribed under Order 38 Rule 5 CPC, besides the undertaking affidavit dated 07.08.2014 which he had already filed. The said exercise has to be carried out within a period of three weeks from the date of receipt of a copy of this order.

8. These Civil Revision Petitions are disposed of with the aforesaid directions. Consequently, connected miscellaneous petition is closed. No costs.

Pgp

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub-Assistant Registrar

To

The III Additional District and Sessions Judge,
Cuddalore at Virudhachalam

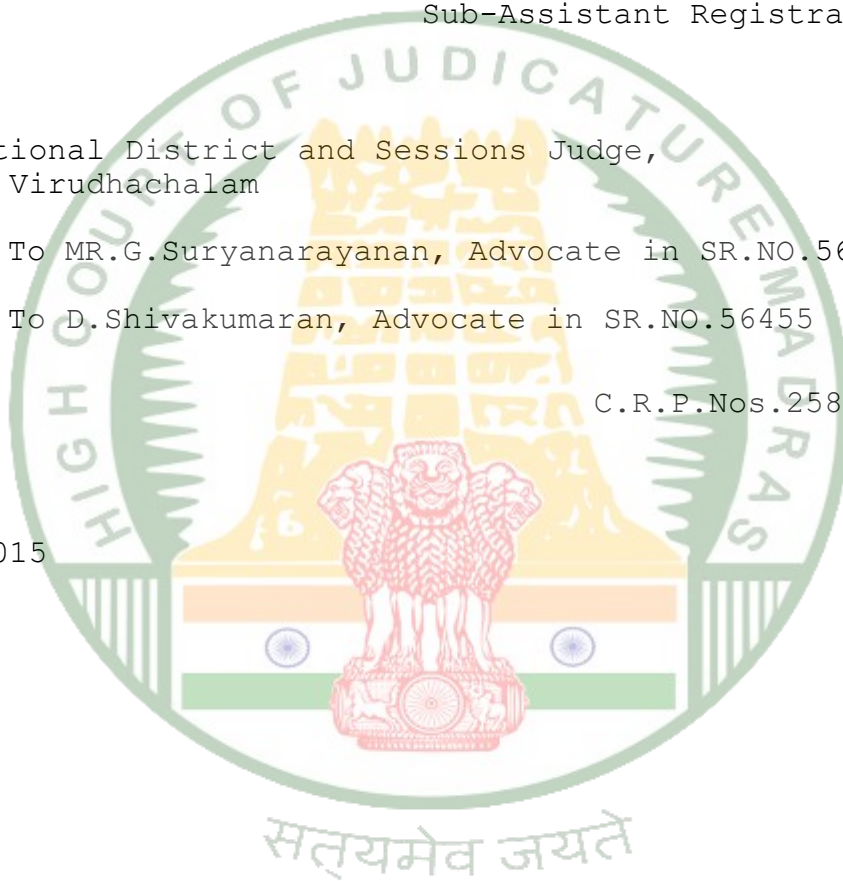
+2 C.C. To MR.G.Suryanarayanan, Advocate in SR.NO.56727

+1 C.C. To D.Shivakumaran, Advocate in SR.NO.56455

C.R.P.Nos.2582 & 3001 of 2015

MSM(CO)

sd : 20/10/2015



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Dated : 14.10.2015