

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2017

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD) NO.1875 OF 2017
AND CMP NO.9004 OF 2017

1.P.Rajeswari
2.P.Venkatesan

... Petitioners

Vs.

Kamakshi Sumathi @ Sumathi
Wife of Rajendiran
Daughter of Late Kamatchi Thevar
APT BLK 713, PASIRIS STREET,
02-35-72, Singapore - 510 713.
Rep. by Power Agent Desabandu
Sundarakottai Village,
Mannargudi Taluk, Tiruvarur District.

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 04.02.2017 passed in I.A.No.579 of 2016 in O.S.No.52 of 2015 by the learned District Munsif, Mannargudi.

For Petitioners : Mr.S.Baskaran
For Respondent : Mr.A.Saravanan

ORDER

The defendants are the revision petitioners. The revision petitioners filed an interlocutory application to reject the proof affidavit filed by the power of attorney holder. The contention of the revision petitioners is that the power of attorney holder can give evidence only in respect of acts done by him in exercise of the power granted and he could not depose in the place of the principle and depose on the acts privy to him / her.

2. The respondent / plaintiff denied the contention of the revision petitioners and that the issue involved in the suit is well known to him and he is competent to let in evidence on behalf of the revision petitioners. The Trial Court dismissed the interlocutory application on the ground that even before cross examination, the Court cannot come to a conclusion as to whether the power of attorney agent is competent or not and the materials involved in the case falls within the personal knowledge of him or not. Aggrieved over the same, the revision petitioners are before this Court.

3. Heard both sides.

4. According to the revision petitioners, the property was purchased in the name of the Veerammal, by sale deeds dated 15.06.1983, 04.07.1988 and 20.07.1983 respectively, during the lifetime of her husband and son. The power of attorney holder cannot depose on the issue of purchase of the property as well as the settlement which had taken place between the parties before the date of execution of the power of attorney.

5. Per contra, learned counsel for the respondent would submit that the suit itself is filed for permanent injunction and the very issue of interference with the possession of the property was made by the revision petitioners/defendants, after the respondent was appointed as a power of attorney. The cause of action also clearly shows that on that day when the power of attorney was engaged in the cultivation activities the revision petitioners/defendants had interfered with his work. They have attempted to trespass into the property with a view to take over the property illegally. The issues pertaining to the suit is well

within the personal knowledge and personally attributable to him. Therefore, the respondent is competent to let in evidence.

6. Admittedly, the suit is filed for permanent injunction on the cause of action, which has arisen after the appointment of the power of attorney and when the power of attorney engaged in the cultivation activities. The allegation is that the revision petitioners / defendants had interfered with the possession of the property by picking up quarrel with the power of attorney. Therefore, it is clear that the cause of action is purely based on the issue which is well within the personal knowledge of the power of attorney. In such circumstances, the finding of the Trial Court that unless the power of attorney is subjected to cross examination, the Court cannot come to a conclusion as to whether the power of attorney is competent to depose on behalf of the members or not.

7. In the instant case, it appears that the cause of action has arisen based on the acts done by the revision petitioners / defendants against the respondent / plaintiff. In such circumstances, I do not find any discrepancy in the order passed by the Trial Court. The Civil Revision

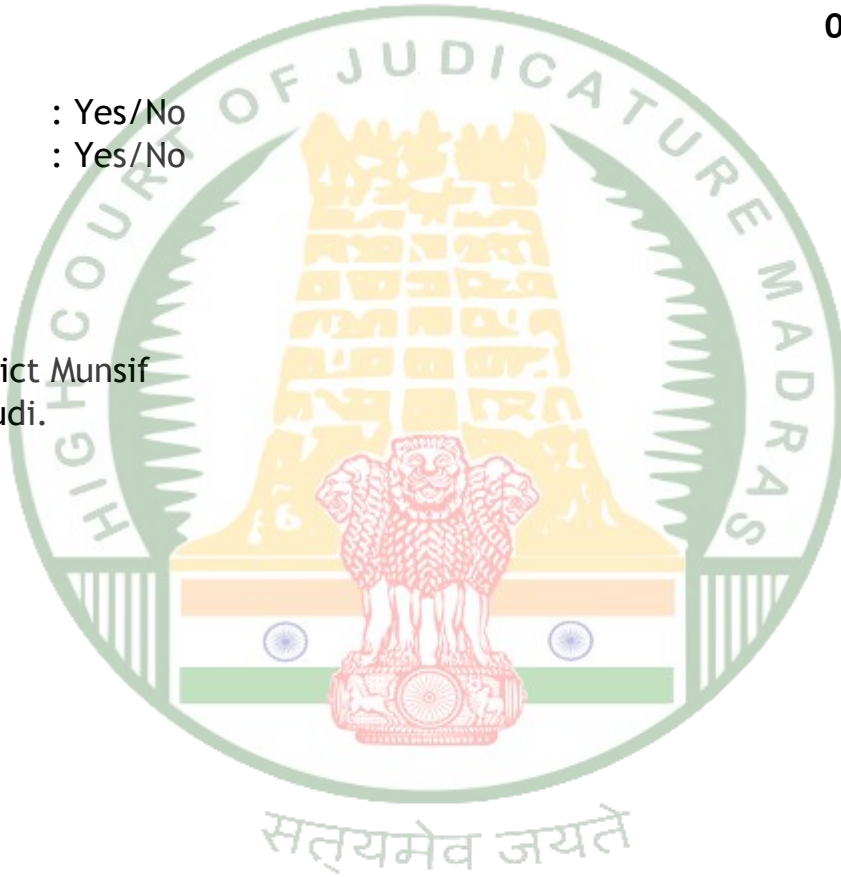
Petition merits no consideration and accordingly, stands dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

08.08.2017

Index : Yes/No
Internet : Yes/No
VV/TK

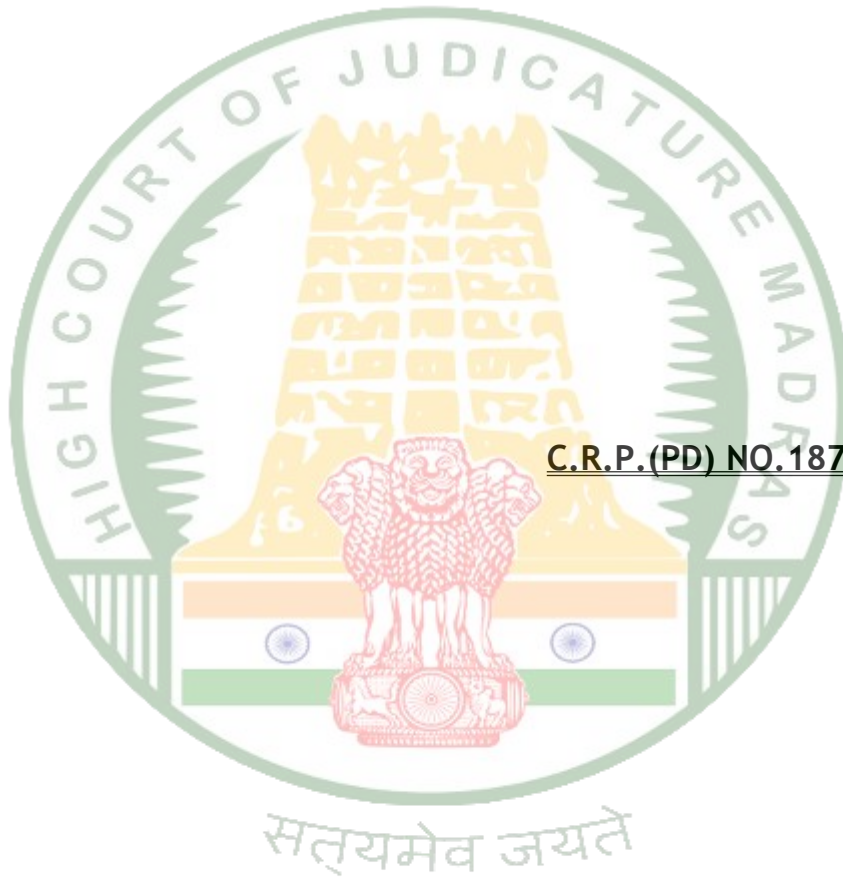
To

The District Munsif
Mannargudi.



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M.GOVINDARAJ, J.
VV/TK



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