

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2017

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD)No.2292 of 2014  
& M.P.No.1 of 2014

M.Ekambaram

.. Petitioner

Vs.

1.A.Mani

2.K.Sekar Naidu

.. Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 17.11.2012 made in C.M.A.No.13 of 2009 on the file of the learned Sub-Judge, Thiruvallur, confirming the order of dismissal dated 18.08.2009, passed in I.A.No.54 of 2008 in O.S.No.284 of 2007 on the file of the District Munsif, Uthukottai.

For Petitioner : Mr.T.P.Sekars

For R1 : No appearance

For R2 : Mr.P.Dhananjayan

**ORDER**

This Civil Revision Petition is filed against the fair and decretal order dated 17.11.2012 made in C.M.A.No.13 of 2009 on the file of

the learned Sub-Judge, Thiruvallur, confirming the order of dismissal dated 18.08.2009, passed in I.A.No.54 of 2008 in O.S.No.284 of 2007 on the file of the District Munsif, Uthukottai.

2. The petitioner is plaintiff, respondents are the defendants 13 and 14 in O.S.No.284 of 2007 on the file of the District Munsif cum Judicial Magistrate at Uthukottai, which was filed for declaration and permanent injunction restraining the respondents from disturbing the possession of the petitioner; permanent injunction restraining the defendants 15 & 16 from disconnecting the electricity service connection No.26/134/44 in suit property in R.S.No.72 of 2011 by transferring the name and for permanent injunction restraining the defendants 17 and 18 from transferring the patta to any other person. According to the petitioner, he became the owner of the suit property as per the agreement of sale dated 09.12.1979, entered into between himself and one Balaiyya Chetti, owner of the suit property. As per the agreement of sale, the said Balaiyya Chetti handed over all the original documents and put the petitioner in possession of the suit property. From that date, he is in possession and enjoyment of the suit property as owner, to the knowledge of all. After death of Balaiyaa Chetti, the legal heirs of

the said Balaiyaa Chetti interfered with possession and enjoyment of the petitioner. Hence, he has filed the present suit. Along with the said suit, he filed I.A.No.54 of 2008 against the respondent herein, for temporary injunction restraining them from interfering with his peaceful possession and enjoyment of the property. The second respondent filed counter affidavit and opposed the said application. The learned Judge dismissed the application filed for interim injunction. Against the said order dated 18.08.2009, the petitioner filed C.M.A.No.13 of 2009. The Appellate Authority dismissed the C.M.A challenging the order of the learned Judge dated 18.08.2009.

3. Against that order of dismissal dated 18.08.2009 made in C.M.A.No.13 of 2009, the petitioner has come out with the present Civil Revision Petition.

4. Heard the learned counsel appearing for the petitioner and second respondent and perused the materials available on record.

5. From a reading of the order made in I.A.No.54 of 2008 and judgment in C.M.A.No.13 of 2009 of the Courts below, it is seen that both the Courts have not given any categorical finding

regarding the issue, whether the petitioner is in possession and enjoyment of the suit property. Both the Courts have held that a proper remedy to the petitioner is to file a suit for specific performance and he is not entitled to any relief of declaration. The Courts below have committed an irregularity in rendering a finding with regard to the adverse possession claimed by the petitioner. In view of the failure on the part of the Courts below to render the finding whether the petitioner made out prima facie case and balance of convenience for injunction, the impugned order of the learned Judge and judgment of the Appellate Court are liable to be set aside.

6. The learned counsel appearing for the petitioner and respondents submitted that a direction may be issued to the learned Trial Judge to dispose the suit within a time specified by this Court. Recording the submission of the learned counsel for the petitioner and respondents and since the suit is of the year 2007, without deciding the issue in this revision on merits, the Civil Revision Petition is disposed of, directing the learned District Munsif, Uthukottai to dispose the suit as expeditiously as possible in any event, not later than three months from the date of receipt of a

copy of this order, without being influenced by the order passed by the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

24.10.2017

Index: Yes/No

gsa

To

1. The Sub-Judge,  
Thiruvallur

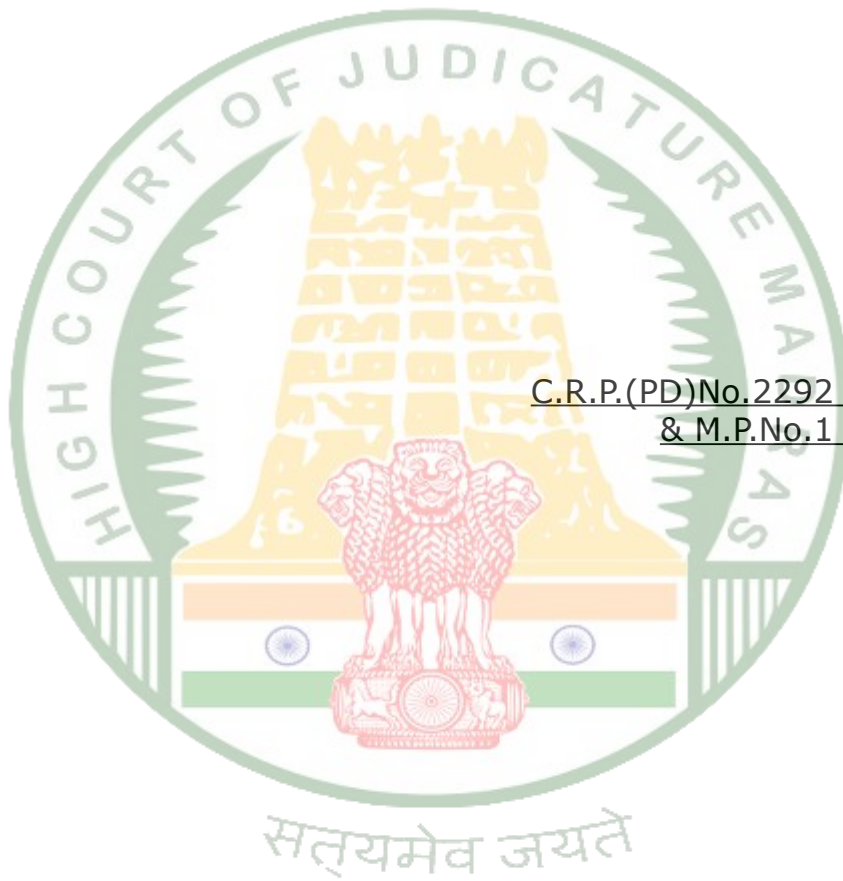
2. The District Munsif,  
Uthukottai.



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**V.M.VELUMANI,J.**

gsa



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