

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated: 19.04.2017**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN**

**CRP(PD)No.3174 of 2013  
and  
M.P.No.1 of 2013**

V.Ramanathan .. Petitioner

**Vs.**

V.Senthil Nathan .. Respondent

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal orders passed in I.A.No.87 of 2012 in O.S.No.66 of 2010 dated 11.10.2012 on the file of the Court of Additional District Munsif, Chidambaram.

For Petitioner : Mr.A.Muthukumar

For Respondent : Mr.R.Bharathkumar

**ORDER**

The defendant in a suit for permanent injunction filed by the plaintiff/respondent herein is the revision petitioner, challenging the

dismissal order of his application sought for appointment of advocate commissioner dated 19.10.2012, made in I.A.No.87 of 2012 in O.S.No.66 of 2010 on the file of the learned Additional District Munsif Court, Chidhambaram.

2.I heard Mr.A.Muthukumar, learned counsel for the petitioner and Mr.R.Bharathkumar, learned counsel for the respondent and perused the entire materials available on record.

3.It is seen from the records that the respondent herein as plaintiff filed the suit for permanent injunction against the revision petitioner in O.S.No.66 of 2010 before the learned Additional District Munsif, Chidhambaram, in which the petitioner herein took out an application for appointment of advocate commissioner to note down the physical features.

4.The said application was resisted by the respondent herein contenting that the application to appoint advocate commissioner to note down the physical features of the suit property and its adjacent property is not maintainable when the respondent herein filed the suit for bare injunction only.

5.The trial Court has dismissed the commission petition holding that since the plaintiff has filed the suit for bare injunction and therefore the trial Court has to see whether the plaintiff is having possession and enjoyment over the suit property? and whether the possession and enjoyment of plaintiff is being disturbed by the defendant?. The trial Court further held that it is the bounden duty of plaintiff to prove his possession of enjoyment over the suit property. Further the defendant sought for appointment of advocate commissioner to inspect and measure the suit property and also its adjacent property and hence the petition filed by the revision petitioner was dismissed.

6.Considering the rival submission on either side, this Court would always in favour of appointing advocate commissioner to enlighten the Court properly in respect of the suit property and it is also the view of this Court that even in a suit for permanent injunction advocate commissioner could be appointed. But in the present case on hand, I am in agreement with the finding of the trial Court that in a suit for permanent injunction possession and enjoyment alone has to be proved by the plaintiff. If the plaintiff failed to prove the same, his

suit will be dismissed.

7. That apart, in the present case, the defendant/revision petitioner sought for appointing an advocate commissioner to note down the physical features and also for the measurement of the suit property and its adjacent property is not at all maintainable in a suit for permanent injunction. Therefore I do not find any error or infirmity over the impugned order of the trial Court and the same is liable to be affirmed.

8. In the result:

(a) this Civil Revision Petition is dismissed, by confirming the order passed in I.A.No.87 of 2012 in O.S.No.66 of 2010, dated 11.10.2012, on the file of the learned Additional District Munsif, Chidhambaram;

(b) the petitioner/defendant is hereby giving liberty to file a petition for appointment of advocate commissioner within a period of 15 days from the date of receipt of a copy of this order, for inspection, measurement and filing report in respect of the suit property alone, if so he advised;

(c) the learned Additional District Munsif, Chidhambaram, is

hereby directed to dispose the suit in O.S.No.66 of 2010, within a period of three months thereafter. No costs. Consequently, connected miscellaneous petition is closed.

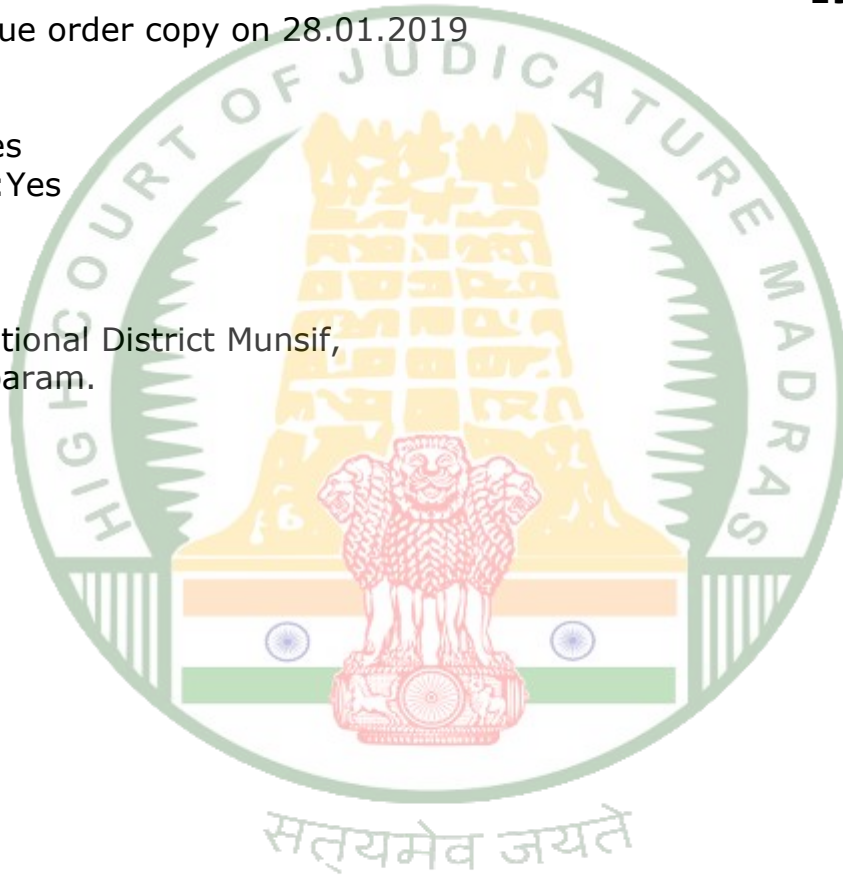
**19.04.2017**

Note: Issue order copy on 28.01.2019  
vs

Index: Yes  
Internet: Yes

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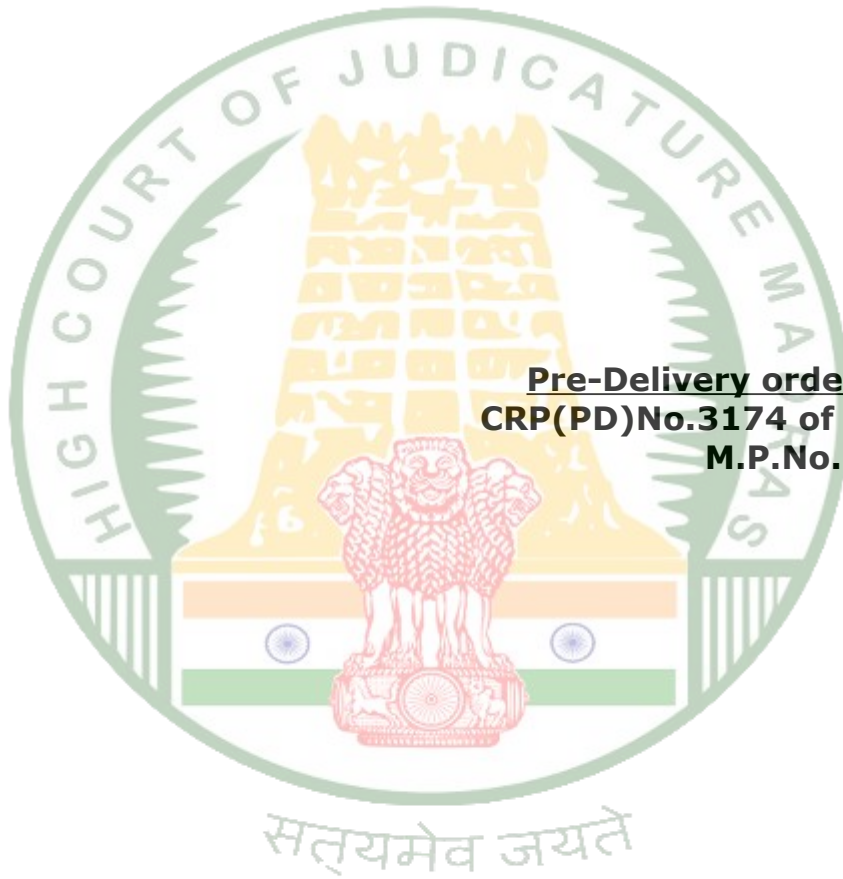
The Additional District Munsif,  
Chidambaram.



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**M.V.MURALIDARAN, J.**

VS



**Pre-Delivery order made in  
CRP(PD)No.3174 of 2013 and  
M.P.No.1 of 2013**

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