

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)No.4788 of 2013

and

M.P.No.1 of 2013

1.Kokilambal
2.Saroja

... Petitioners

Vs

1.Karthikeyan
2.Geetha

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 06.11.2013 passed in I.A.No.685 of 2013 in O.S.No.267 of 2012 on the file of the learned Principal District Munsif, Erode.

For Petitioners : Mr.A.K.Kumarasamy

For Respondents : Mr.E.K.Kumaresan

WEB **ORDER** COPY

The petitioners have filed the above suit in O.S.No.267 of 2012 seeking the relief of Permanent Injunction restraining the respondents / defendants from interfering with peaceful possession and enjoyment

of an Electricity Service connection and an Electric Motor described in suit schedule property.

2.It is the specific case of petitioners that there is a common well in the suit property belonging to petitioners and respondents/defendants and the Electricity Service Connection stand in the name of one of the co-sharers and all sharers are entitled to equal shares.

3.It is seen that the respondents have contested the suit claiming the well is a common one, but the service connection to the motor and pump- set installed was claimed as their exclusively property.

4.Pending trial, respondents filed an application in I.A.No.685 of 2013 praying to appoint an advocate commissioner to visit the suit property and to note down the physical features.

5.The said application came to be allowed by the Learned Trial Judge holding that from the examination of parties and the pleadings and in view of the disputed facts, appointment of advocate commissioner is required for proper appreciation of the case and

thereby appointed an Advocate commissioner to note down the physical features. The said Order is under challenge in this Civil Revision Petition.

6.I heard Mr.A.K.Kumarasamy, learned counsel for the petitioners and Mr.E.K.Kumaresan, learned counsel for the respondents and perused the entire materials available on record.

7.The Learned Counsel for the petitioner would submit that petitioners are the plaintiffs in the suit and it is for petitioners to prove their case and the respondents herein cannot be permitted to file an application for appointment of advocate commissioner to collect evidence. It is his further contention that the application is intended to delay the suit proceedings.

8.On careful perusal of the impugned Order, it seen that on deep evaluation of the evidence adduced by parties and their pleadings as well, the Learned Trial Judge has held that to arrive at a just and proper decision and that the suit on hand being one for Injunction, the appointment of advocate commissioner has become indispensable.

9.No doubt, a picture is worth more than thousand words, therefore, I am unable to find fault with the holding of the Trial Judge. It is needless to say that noting of physical features cannot be equated or termed as to collection of evidence.

10.In the result:

(a) this civil revision petition is dismissed, by confirming the order passed in I.A.No.685 of 2013 in O.S.No.267 of 2013, dated 06.11.2013, on the file of the learned Principal District Munsif, Erode;

(b) the trial Court is directed to pass suitable orders directing the Advocate Commissioner to file his report within a period of one month;

(c) on filing the report, the trial Court is directed to take up the suit on day to day basis, without giving any adjournment to either parties and to dispose of the suit within a period of four months from the date of receipt of a copy of this order. Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit.

Consequently, connected miscellaneous petition is closed.

No costs.

24.04.2017

vs

Note: Issue order copy on 28.01.2019

Index : Yes

Internet : Yes

To

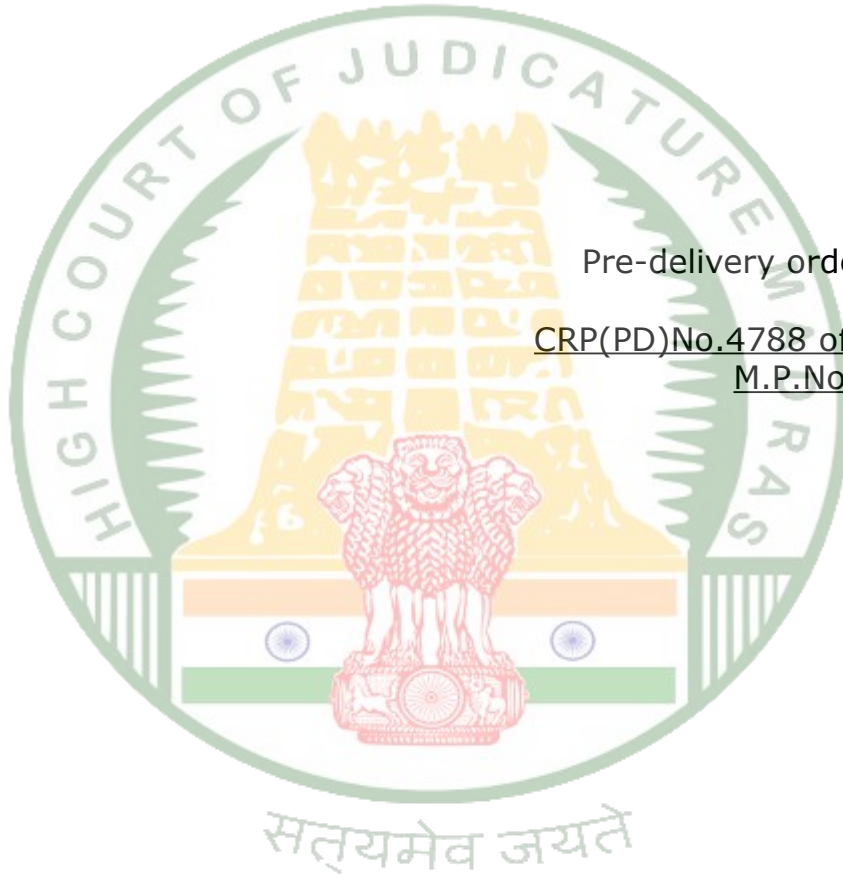
The Principal District Munsif, Erode.



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M.V.MURALIDARAN, J.

vs



Pre-delivery order made in
CRP(PD)No.4788 of 2013 and
M.P.No.1 of 2013

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