

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2017

CORAM:

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

C.R.P.(PD)No.511 of 2013  
& M.P.No.1 of 2013

Chinnathambi Gounder

.. Petitioner

Vs.

1. Murugesu Gounder
2. Vellachi Ammal
3. Varadharaj
4. Ramakrishnan
5. Saminnathan

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 13.08.2012 made in I.A.No. 924 of 2011 in O.S.No.235 of 2010 on the file of the Principal District Munsif Court, Thirukovilur.

For Petitioner : Mr. J.Ramakrishnan

For R1 to R5 : No appearance

**ORDER**

The Civil Revision Petition is filed against the fair and decretal order dated 13.08.2012 made in I.A.No.924 of 2011 in O.S.No.235 of 2010 on the file of the Principal District Munsif Court, Thirukovilur.

2. The petitioner is the first defendant, respondents 1 to 4 are the plaintiffs and the fifth respondent is the second defendant in O.S.No.235 of 2010. The respondents 1 to 4 filed the suit for declaration and injunction against the petitioner and fifth respondent from interfering with their peaceful possession and enjoyment of the suit property by trespassing into the suit property and for permanent injunction restraining the defendants 3 to 6 from giving electricity connection to the petitioner. The petitioner filed written statement in December 2010 and filed I.A.No.924 of 2011 for appointment of Advocate Commissioner to inspect the suit property and to note down the physical features of the suit property with the help of surveyor.

3. According to the petitioner, the petitioner and his brother are in possession and enjoyment of the suit property and are cultivating the land by using oil engine for irrigation. It is necessary to appoint Advocate Commissioner to note down the physical features and existence of oil engine and water channel for irrigation.

4. The respondents 1 to 4 filed counter affidavit and opposed the said application. They contended that there is no dispute with regard to the suit property and they are also in possession and enjoyment of the suit property. The issue to be decided in the suit is the title of the respondents 1 to 4.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application.

6. Against the said order of dismissal dated 13.08.2012 made in I.A.No.924 of 2011, the present Civil Revision Petition is filed by the petitioner/first defendant.

7. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

8. From the materials available on record, it is seen that the respondents 1 to 4 filed suit for declaration of title and injunction restraining the petitioner and fifth respondent from interfering with their peaceful possession and enjoyment of the suit property by trespassing into the suit property and for permanent injunction

restraining the defendants 3 to 6 not to give electricity connection to the petitioner. In view of the relief sought for by the respondents 1 to 4, it is for them to prove their title and possession. There is no dispute with regard to the title and possession of the suit property.

9. It is well settled that when there is no dispute with regard to the suit property, it is not necessary for appointment of Advocate Commissioner to find out as to who is in possession of the suit property and the Advocate commissioner cannot be appointed to collect the evidence on behalf of the parties. In view of the well settled position, there is no irregularity or illegality warranting interference by this Court with the order of the learned trial Judge, dated 13.08.2012.

10. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.10.2017

Index : Yes/No

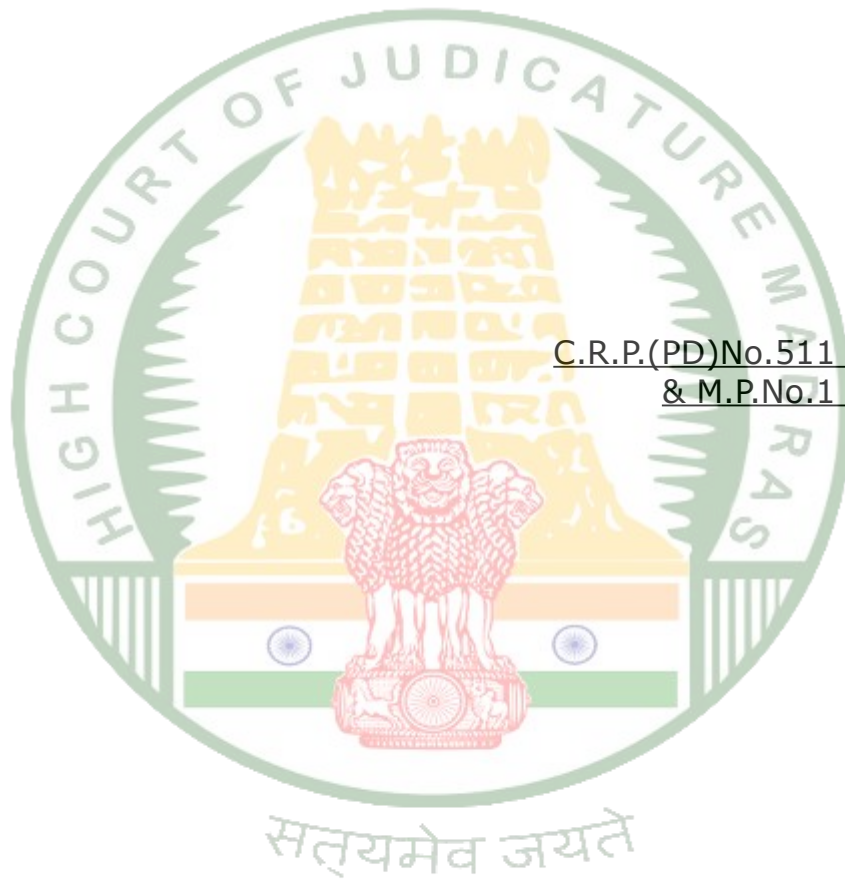
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To

The Principal District Munsif,  
Thirukovilur.

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

dm/kj



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