

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4145 of 2012
and M.P.No.1 of 2012

1.K.Perumal
2.T.Pavayee
3.S.Elumalai

.. Petitioners

Vs.

S.Sugunan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 24.04.2012 made in I.A.No.1236 of 2011 in O.S.No.455 of 2009 on the file of the Principal District Munsif Court, Salem.

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For Petitioners

: Ms.A.Kundavai
for Mr.R.Subramanian

For Respondent

: Mr.K.Bijai Sundar

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 24.04.2012 made in I.A.No.1236 of 2011 in O.S.No.455 of 2009 on the file of the Principal District Munsif Court, Salem.

2. The petitioners are the plaintiffs and respondent is the defendant in O.S.No.455 of 2009 on the file of the Principal District Munsif Court, Salem. The petitioners filed suit for permanent injunction restraining the respondent from interfering with their peaceful possession and enjoyment of the suit property. The respondent filed written statement on 12.08.2009 and denied the title of the petitioners. The petitioners filed I.A.No.1236 of 2011 for amendment of the plaint to include the relief of declaration.

3. According to the petitioners, in view of the denial of their title by the respondent in the written statement, it is necessary to include the relief of declaration.

4. The respondent filed counter affidavit and opposed the said application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, dismissed the application on the ground that in the report filed by the Advocate Commissioner, it is stated that the suit property does not come within the properties of petitioners and it is in the properties of the respondent and further held that the petitioners filed the present application belatedly.

6. Against the order of dismissal dated 24.04.2012 made in I.A.No.1236 of 2011, the present Civil Revision Petition is filed by the petitioners.

7. Heard both sides and perused the materials on record.

8. From the materials on record, it is seen that originally, the petitioners filed suit for permanent injunction and subsequently, they have filed the present application to include the relief of declaration on the ground that the respondent is denying their title. The learned Judge dismissed the application on the ground that the application is belated one and as per the report of the Advocate Commissioner, the suit property is not within the properties of the

petitioners. Both the grounds are not valid.

9. It is well settled that in the suit for permanent injunction, when the defendant denies title of the plaintiff, it is open to the plaintiff to amend the plaint to include the relief of declaration. It is well settled that such relief can be sought for and granted even in the stage of second appeal also. Further, report of the Advocate Commissioner is not final and it is only to assist the Court to decide the issue. The petitioners have right to object the Advocate Commissioner's report and also have a right to examine the Advocate Commissioner in the Court to prove that his report is not correct. For the above reasons, order of the learned Judge is set aside as it suffers from irregularity and the learned Judge has not properly exercised his power conferred on him.

10. In the result, the Civil Revision Petition is allowed and I.A.No.1236 of 2011 is allowed. It is open to the respondent to file additional written statement within three weeks from the date of filing of the amended copy of the plaint. From the order of the learned Judge, it is seen that on earlier occasion, the suit is dismissed for default and subsequently, it was restored. The suit is of the year 2009, the learned Principal District Munsif, Salem, is

directed to dispose the suit in O.S.No.455 of 2009 as expeditiously as possible in any event not later than three months from the date of filing of additional written statement by the respondent. No costs. Consequently, connected Miscellaneous Petition is closed.

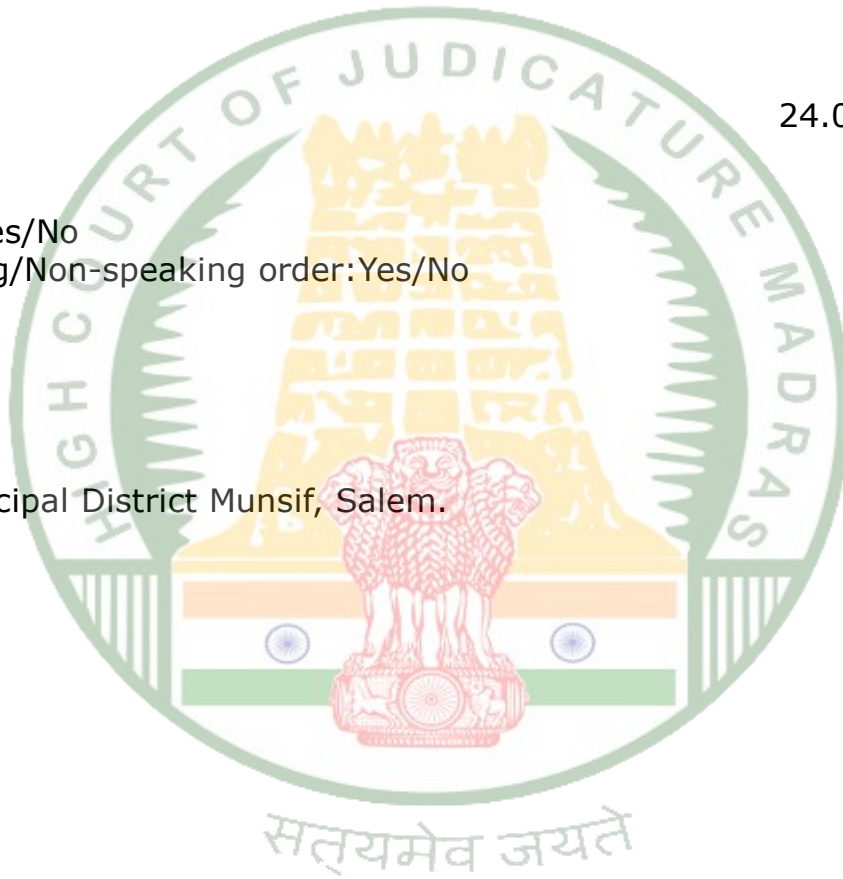
24.07.2017

Index:Yes/No
Speaking/Non-speaking order:Yes/No

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To

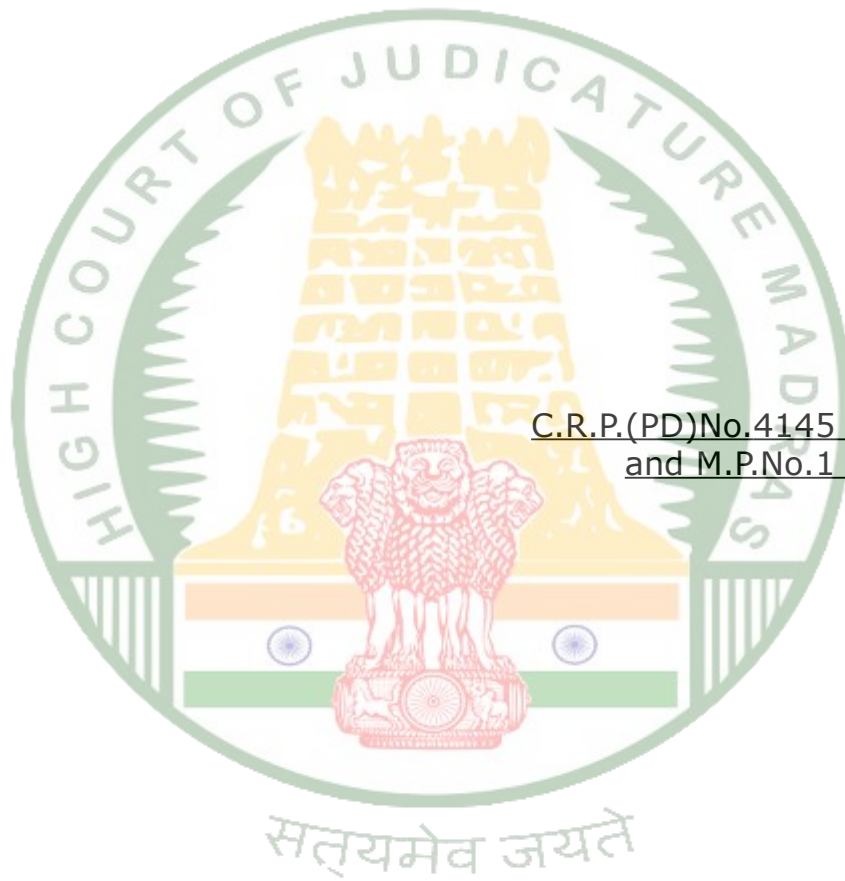
The Principal District Munsif, Salem.



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V.M.VELUMANI, J.

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