

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

**Dated : 23.10.2018**

**Coram**

**The Honourable Ms.Justice P.T.ASHA**

**C.R.P(PD)No.3482 of 2012**

**and**

**M.P.Nos.1 of 2012 & 1 of 2013**

1.M.Krishnan  
2.M.Sudevan

...Petitioners

Versus

1.V.Mani  
2.K.Prakash

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal orders dated 27.08.2012 made in I.A.No.109 of 2012 in O.S.No.20 of 2012 passed by the learned District Munsif, Coonoor.

For Petitioners : Mr.J.Franklin

For Respondent - 1 : Died

Respondent - 2 : Not ready in notice

**ORDER**

This Civil Revision Petition is filed challenging the order passed by the learned District Munsif, Coonoor in I.A.No.109 of 2012 in O.S.No.20 of 2012 dated 27.08.2012, in and by which the learned District Munsif, Coonoor had appointed an Advocate Commissioner in a suit filed for permanent injunction. The defendants are the revision petitioners before this Court.

2. The brief facts necessary for the disposal of the Civil Revision Petition are as follows:

The respondents herein had filed a suit for a bare injunction restraining the revision petitioners, their men and agents from interfering with their peaceful possession and enjoyment of the 'A' Schedule Property as well as the 'B', 'C', 'D' & 'E' schedule properties.

3. In the said suit, the respondents had taken out an Interlocutory Application in I.A.No.109 of 2012 to appoint a Court Commissioner who with the help of a qualified surveyor

should inspect the schedule properties, verify the boundaries of the schedule properties, demarcate the same and fix the boundaries for the same. In the affidavit that has been filed in support of the said petition, the respondents have not set out any reason warranting the appointment of an Advocate Commissioner. The averments contained in the affidavit do not make a reference to need for such appointment and it is reasons given in the affidavit is only with reference to the need for providing the interim injunction.

4. The revision petitioners have filed a counter affidavit stating that the suit is one for bare injunction. It is for the petitioners to first identify their properties and they cannot be seeking the help of an Advocate Commissioner to identify their properties in the guise of inspecting the same.

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5. The learned District Munsif, Coonoor by his order dated 27.08.2012 has proceeded to allow the said impugned Application. It is aggrieved by this order, the revision petitioners are before this Court.

6. Heard Mr.Franklin, learned counsel for the petitioners. Though a counsel had entered appearance for the first respondent, none appeared for the respondents' side when the matter was posted yesterday i.e., 22.10.2018 and therefore, the matter was posted today i.e., 23.10.2018 under the caption, "For Orders". Even today, there is no representation for the respondents. Hence, this Court is proceeding to hear and pass orders in this Civil Revision Petition.

7. I am of the opinion that the learned District Munsif, Coonoor without applying his mind to the facts and issue had allowed the Application on the following basis:

*"Clarification heard. In the interest of justice and the Court commissioner is appointed Mr.Lakshmanan advocate is appointed as Advocate Commissioner."*

The learned Judge had not given any reason whatsoever to show as to why in a suit for a bare injunction there was the necessity for an Advocate Commissioner to inspect the property, note down the physical features and demarcate

boundary lines. The plaintiffs who have come forward with the suit for an injunction on the basis that they are in possession of the property are bound to prove the same and they cannot use the Court for gathering the evidence. Time and again, this Court has deprecated the habit of seeking for the appointment of an Advocate Commissioner to gather evidence to show possession. In my opinion, the learned District Munsif, Coonoor failed to appreciate this basic principle and had mechanically passed the order. The order of the learned District Munsif suffers from an infirmity and therefore, the same is liable to be set aside.

8. In the result, this Civil Revision Petition is allowed and the order of the learned District Munsif, Coonoor in I.A.No.109 of 2012 in O.S.No.20 of 2012 dated 27.08.2012 is set aside. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

**23.10.2018**

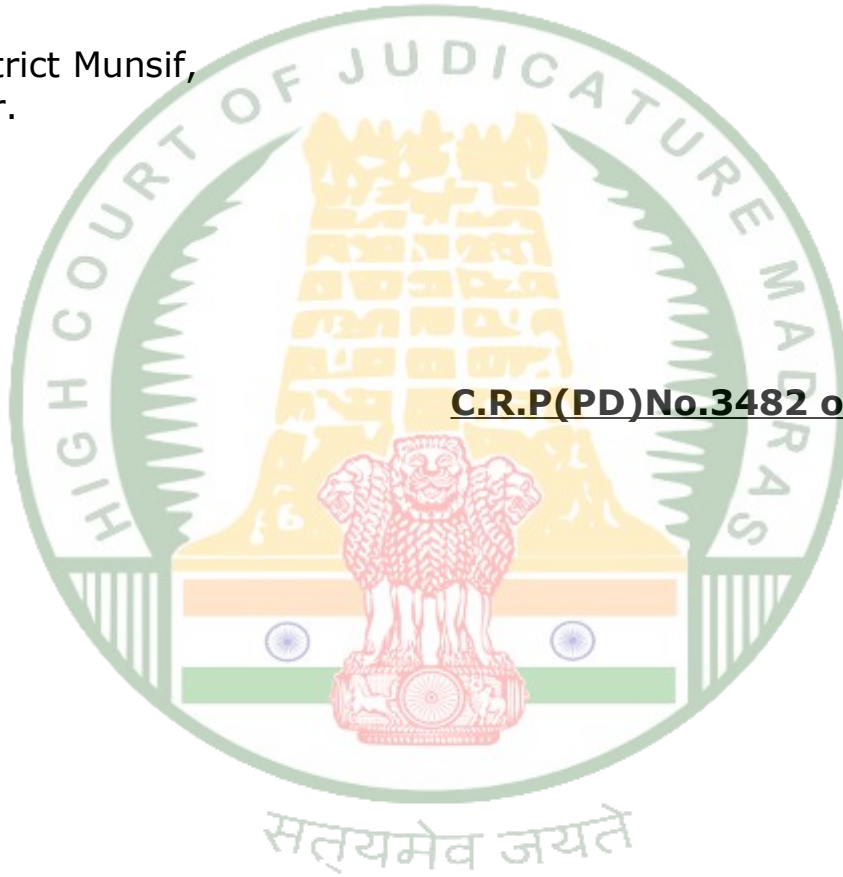
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Index: Yes/No

**P.T.ASHA, J.,**

mrr

To  
The District Munsif,  
Coonoor.



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