

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP(PD).No.530 of 2018
and CMP.No.2765 of 2018

1.Veerasamy
2.Raji

.. Petitioners

Vs

Nargis Begum

.. Respondent

PRAYER

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order of District Munsif, Mayiladuthurai dated 05.07.2017 made in IA.No.335 of 2015 in OS.No.288 of 2014.

For Petitioners : Mr.S.Sounthar

ORDER

According to the revision petitioners, the respondent herein has filed a suit in OS.No.288 of 2014 for permanent injunction against the revision petitioners. In the aforesaid suit, the revision petitioners have filed an application in IA.No.335 of 2015 under Order 26 Rule 9 of the Civil Procedure Code praying to appoint an Advocate Commissioner for the purpose of measuring the properties of both the

parties, which was dismissed. Challenging the aforesaid order, the revision petitioners have preferred the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioners would submit that the dispute involved in the suit is whether the old wall lies in the revision petitioners' property or the respondent's property. Further, if an Advocate Commissioner is appointed and report is submitted, it will minimise the evidence and no prejudice would be caused to the respondent, if the said application is allowed. Therefore, the order of the court below is liable to be set aside.

3. Heard the learned counsel for the revision petitioners and perused the materials available on record.

4. On perusal of the records, it is seen the respondent has filed the suit for permanent injunction claiming that the suit property belongs to him. When there is a dispute regarding ownership, it is the burden of the plaintiff to prove the case. Further, the present suit is filed for permanent injunction, the application filed by the revision petitioners for appointment of an Advocate Commissioner is only to collect materials to prove the possession of the property. Hence, there

is no error or illegality in the order passed by the court below and this Court is not inclined to interfere with the orders passed by the court below. However, it is for the parties concerned to establish the same before the court below by way of oral and documentary evidence at the time of trial in the suit.

5. With above observations, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

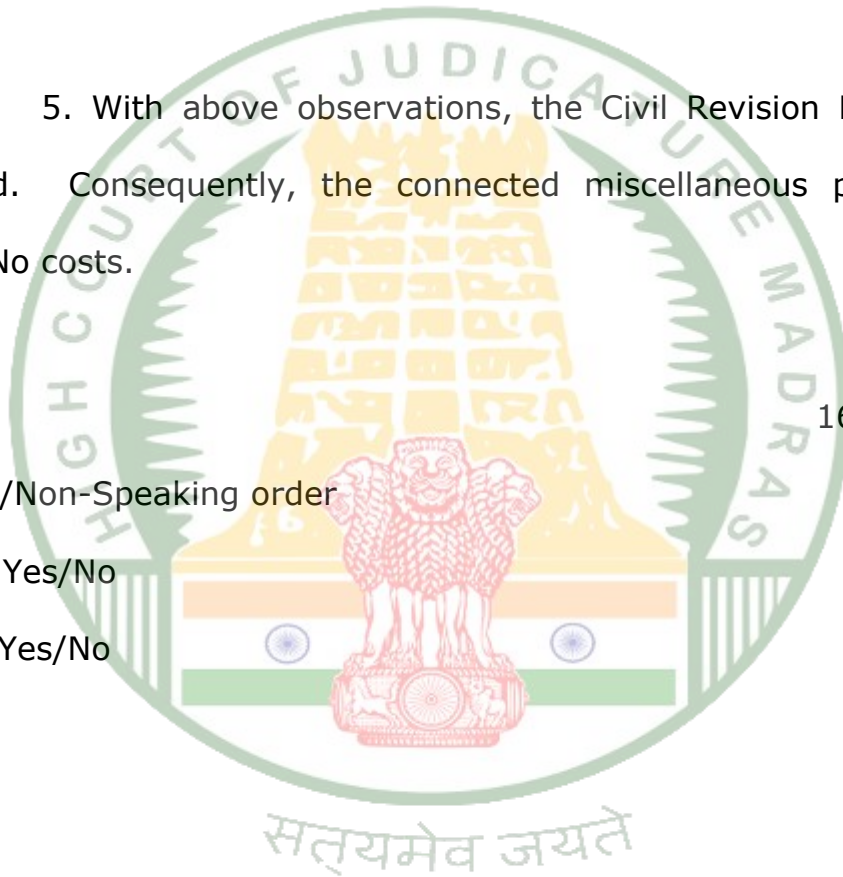
16.02.2018

Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

lok



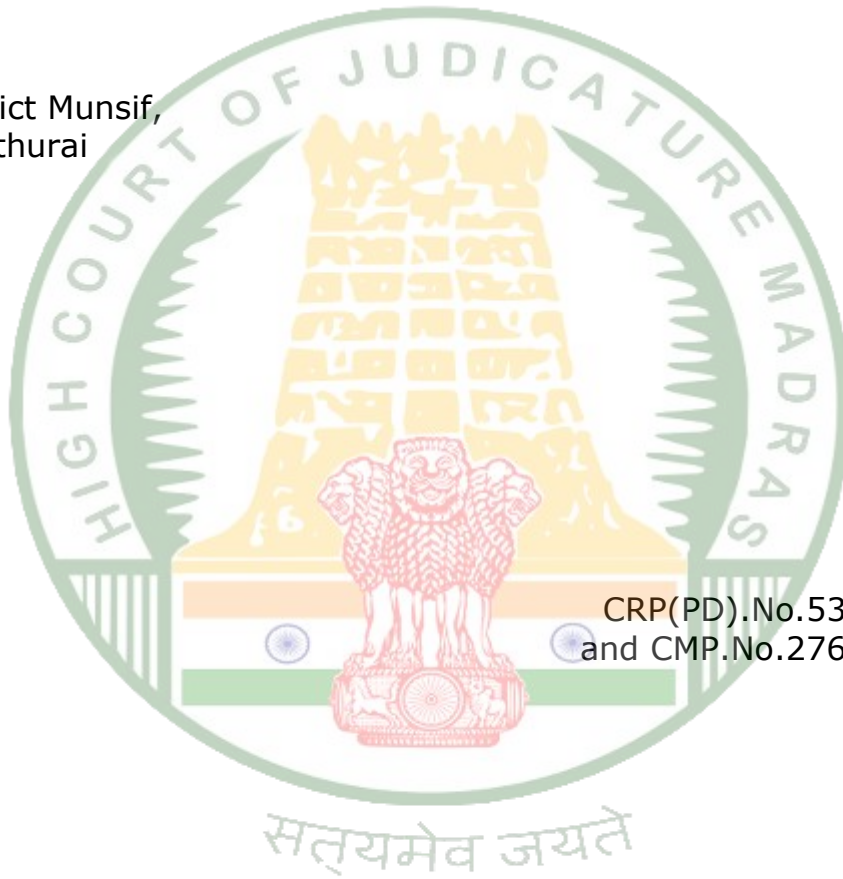
WEB COPY

D. KRISHNAKUMAR J.,

lok

To

The District Munsif,
Mayiladuthurai



CRP(PD).No.530 of 2018
and CMP.No.2765 of 2018

WEB COPY

16.02.2018