

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.06.2018

CORAM

The Hon'ble Mr.Justice **P.VELMURUGAN**CRP(PD)No.826 of 2018
and C.M.P.No.4554 of 2018

S.Palani

... Petitioner

vs.

1.P.Mani

2.M.Sridevi

3.V.Sekar

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 06.01.2018 passed in I.A.No.1563 of 2017 in I.A.No.352 of 2017 in O.S.No.51 of 2017 on the file of the learned Principal District Munsif (II Additional District Munsif [Full Additional charge]), Tirukovilur.

For Petitioner

... Mr.S.Ayyathurai

For Respondents

... Mr.T.K.Saravanan

ORDER

The Civil Revision Petition has been filed by the petitioner against the order dated 06.01.2018 passed in I.A.No.1563 of 2017 in I.A.No.352 of 2017 in O.S.No.51 of 2017 on the file of the learned

Principal District Munsif (II Additional District Munsif [Full Additional charge]), Tirukovilur.

2.The petitioner is the plaintiff and the respondents are the defendants.

3. The brief facts of the case are as follows:

The revision petitioner/plaintiff filed a suit in O.S.No.51 of 2017 against the respondents/defendant seeking permanent injunction on the file of the learned Principal District Munsif (II Additional District Munsif [Full Additional charge]), Tirukovilur. Pending suit, the plaintiff filed an interlocutory application in I.A.No.352 of 2017 under Order 39 Rules 1 and 2 CPC seeking interim injunction restraining the defendants from entering into the suit property and disturbing the peaceful possession and enjoyment of the suit property. The trial Court after considering the materials available on record granted an order of Ad-interim injunction on 03.03.2017 till 13.3.2017 and the same was periodically extended. In that application, the parties were examined as witnesses. After completion of the plaintiff's side evidence, the plaintiff again filed another interlocutory application in I.A.No.1563 of 2017 in I.A.No.352 of 2017 in O.S.No.51 of 2017 to reopen the plaintiff's side evidence and to mark certain documents, which was dismissed by the trial Court on 06.01.2018. Challenging the said

order, the present civil revision petition has been filed by the petitioner.

4.The learned counsel for the petitioner/plaintiff submitted that the petitioner filed I.A.No.352 of 2017 for interim injunction, in which, as the oral evidence was necessary, the petitioner was examined as oral witness and thereafter evidence was completed for both sides. The Village Administrative Officer was also examined as witness on the side of the defendants and thereafter, he has given one document namely, Adangal showing that the suit property is in possession of the petitioner as on 10.02.2017. Therefore, it is just and necessary to reopen the petitioner's side evidence and to mark the documents. Hence, the petitioner filed I.A.No.1563 of 2017 in I.A.No.352 of 2017. The trial Court without considering the case of the petitioner, erroneously dismissed the said application. Therefore, the learned counsel requested this Court to set aside the impugned order passed by the trial Court and to allow the civil revision petition.

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5.The learned counsel for the respondents submitted that several opportunities were given to the petitioner to adduce evidence and to mark the documents. After completion of evidence of both sides, at the belated stage, the petitioner filed I.A.No.1563 of 2017 to reopen the evidence of petitioner/plaintiff and to mark the document. The

Village Administrative Officer was already examined as witness on the side of the respondents/defendants. Though the suit property is in the name of the petitioner, the respondents/defendants are in possession of the same. Hence, at this stage, the application filed by the petitioner is not maintainable and the trial Court rightly dismissed I.A.No.1563 of 2017. Hence, the civil revision petition is liable to be dismissed.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

7. It is seen that during pendency of the suit, the petitioner filed I.A.No.352 of 2017 for interim injunction, in which both parties were examined as witnesses and documents were also marked on behalf of them. The Village Administrative Officer was also examined on the side of the respondents. But, at this stage, the said Village Administrative Officer has given a document namely Adangal stating that the petitioner is in possession of the property as on 10.02.2017.

8. The grievance of the petitioner is that to establish the fact that he is in possession of the suit property, it is just and necessary to mark the document namely Adangal before the trial Court by re-opening the petitioner/plaintiff's side evidence.

9.It is further seen that the trial Court already ordered ad-interim injunction restraining the respondents/defendants from entering into the suit property and interfering with the peaceful possession and enjoyment of the suit property in I.A.No.352 of 2017. If I.A.No.1563 of 2017 is allowed, no prejudice would be caused to the respondents. It is the duty of the petitioner to establish the possession of the suit property by way of adducing evidence or filing documents.

10.Considering the facts and circumstances of case and also considering the submissions made by the learned counsel on either side, in order to provide an opportunity to the petitioner, this Court is inclined to allow the civil revision petition and pass the following order:

"(i)The impugned order dated 06.01.2018 passed in I.A.No.1563 of 2017 in I.A.No.352 of 2017 in O.S.No.51 of 2017 is set aside.

(ii)The trial Court is directed to permit the petitioner to reopen the evidence on the side of the petitioner/plaintiff and to mark certain documents.

(iii)After marking the document, the trial Court is further directed to dispose of the

application in I.A.No.352 of 2017 on merits and in accordance with law within a period of one month from the date of receipt of a copy of this order."

With the above directions, the civil revision petition is allowed.

No costs. Consequently, connected miscellaneous petition is closed.

19.06.2018

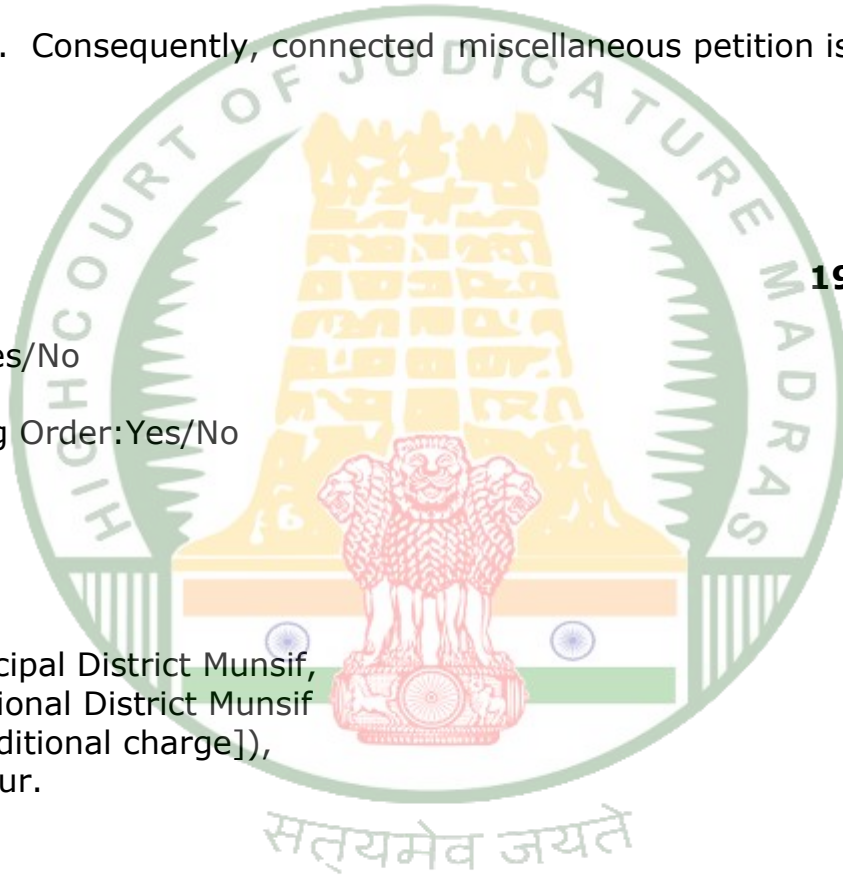
Index:Yes/No

Speaking Order:Yes/No

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To

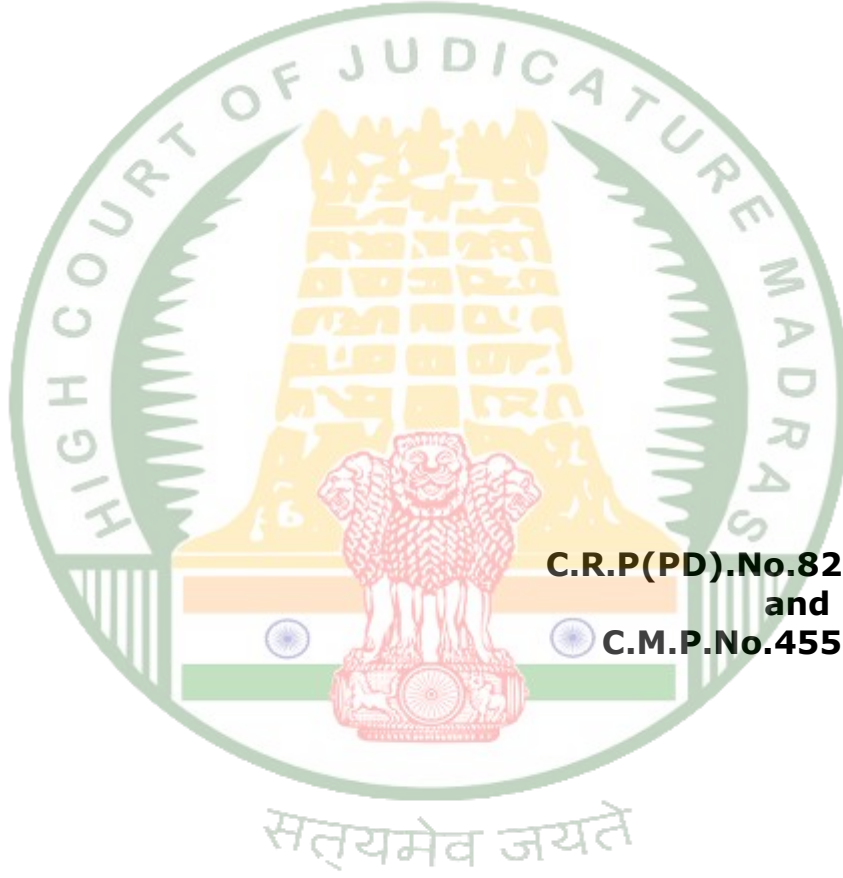
The Principal District Munsif,
(II Additional District Munsif
[Full Additional charge]),
Tirukovilur.



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P.VELMURUGAN.J,

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