

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2377 of 2009
& M.P.No.1 of 2009

1.S.Mani
2.Baghyam
3.Ramasami
4.R.Rathinasami

.. Petitioners

Vs.

1.Girirajan
2.Vijaya
3.R.Arumugham (Deceased)
4.Sasikala
5.Karthik

.. Respondents

(RR4 & 5 brought on record as
Lrs of the deceased 3rd respondent
vide order dated 19.09.2017 made
in M.P.Nos.1 to 3/2014 in
C.R.P.No.2377/2009)

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C to set aside the fair and decretal order dated 05.08.2009 made in E.P.No.24 of 2007 in O.S.No.353 of 1996 on the file of the District Munsif, Mettupalayam.

For Petitioners : Mr.S.Mukunth

For Respondents : M/s.Srinath Sridevan

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 05.08.2009 made in E.P.No.24 of 2007 in O.S.No.353 of 1996 on the file of the District Munsif, Mettupalayam.

2.The petitioners are defendants and respondents 1 to 3 are plaintiffs in O.S.No.353 of 1996 on the file of the District Munsif, Mettupalayam. Pending Civil Revision Petition, the 3rd plaintiff died and respondents 4 and 5 were impleaded as the legal heirs of the deceased 3rd plaintiff. Originally, the respondents 1 to 3 filed the said suit for permanent injunction restraining the petitioners from interfering with their peaceful possession and enjoyment of the suit property by preventing the respondents from using the cart-track. After contest, the suit was decreed by the judgment and decree dated 25.02.2005. The first appeal A.S.No.53 of 2005 on the file of the III Additional Sub Court, Coimbatore and the S.A.No.576 of 2006 before this Court filed by the petitioners were dismissed by the judgment and decree dated 16.08.2005 and 04.01.2007 respectively. After dismissal of the A.S.No.53 of 2005, the respondents filed E.P.No.24 of 2007 for punishing the petitioners for disobeying the decree of injunction granted by the Court and for removal of the construction put up by the petitioners by encroaching suit cart-track.

3.The third petitioner filed counter statement which was adopted by the other petitioners and denied that they have not disobeyed the decree of injunction and contended that they have not put up any construction in the suit cart-track. It is an open agricultural land. Even before the respondents filed suit, there was fence in the cart-track and the same was mentioned in the written statement itself. The respondents did not amend the plaint to include the relief of mandatory injunction for removal of the said fence. The decree is only for injunction and there is no decree for removal of any construction and also contended that the respondents cannot claim two reliefs in one E.P.

4.The learned Judge, considering all the materials on record, by the order dated 05.08.2009, dismissed E.P.No.24 of 2007 in O.S.No.353 of 1996 for arrest of the petitioners and detaining them in Civil prison and allowed the E.P as regards to the removal of the construction put up by the petitioners in the suit cart-track. The learned Judge directed the Court Amin to give warning to the petitioners for peaceful removal of any construction in the suit cart-track.

5. Against the said order dated 05.08.2009 made in E.P.No.24 of 2007 in O.S.No.353 of 1996, the petitioners have come out with the present Civil Revision Petition.

6. Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

7. The learned counsel for the petitioners contended that even though the petitioners have mentioned the existence of fencing in the suit cart-track, the respondents did not seek any relief for removal of said fencing. In view of the failure on the part of the respondents, E.P is not maintainable. The said contention is without merits. Trial Court, after considering the contentions of the parties, decreed the suit on merits. The First Appeal and Second Appeal filed by the petitioners were dismissed. The respondents contended that after dismissal of the First Appeal, the petitioners put up construction in the cart-track and prevented the respondents from using the said cart-track. In view of the decree of injunction in favour of the respondents, the respondents are entitled to use the suit cart-track without any intervention by the petitioners. Further, the petitioners have stated in the counter statement filed in E.P that there is no construction in the suit cart-track and it is only an open

agricultural land. In view of the above facts, there is no merits in the Civil Revision Petition and the same is liable to be dismissed.

8. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

19.02.2018

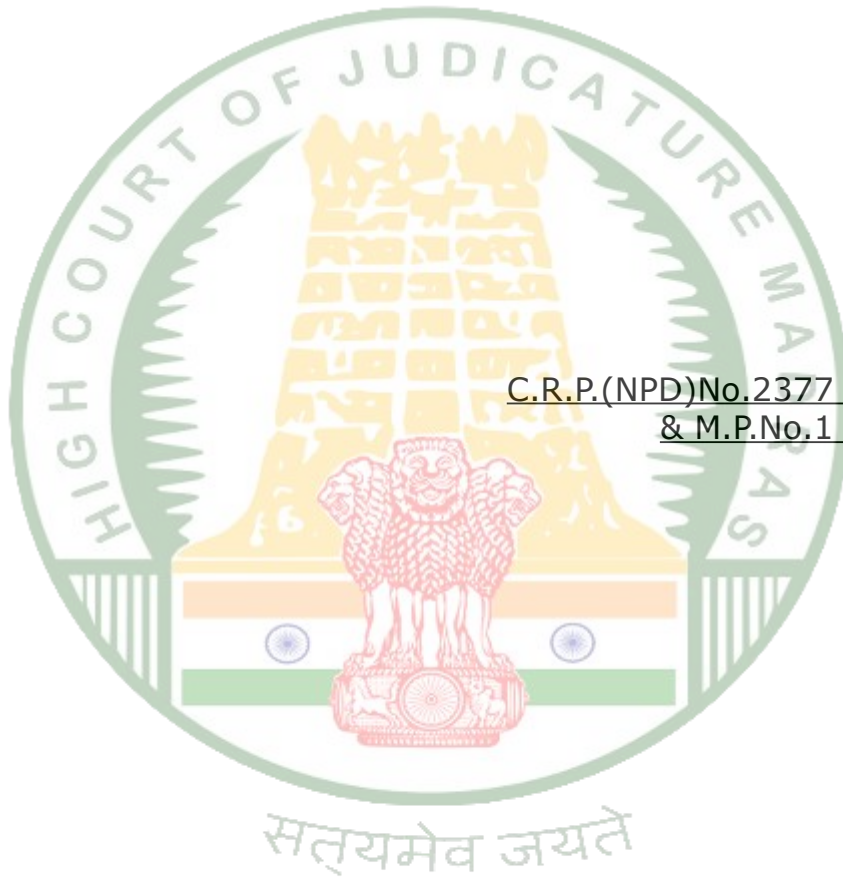
Index :: Yes/No
gsa

To

The District Munsif,
Mettupalayam.



WEB COPY



C.R.P.(NPD)No.2377 of 2009
& M.P.No.1 of 2009

WEB COPY

19.02.2018