

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.03.2018

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

CIVIL REVISION PETITION (PD) No.2353 of 2016
and C.M.P.No.12190 of 2016

1.Kirubanithi

2.Girija

.. Petitioners

vs

Sardha

.. Respondent

The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 01.03.2016 in I.A.No.807 of 2014 in O.S.No.171 of 2012 on the file of the Principal District Munsif, Thiruvannamalai District.

For Petitioner ... Mr.G.Rajan

For Respondent ... Mr.Prithvi

ORDER

The Civil Revision Petition has been filed to set aside the order dated 01.03.2016 passed in I.A.No.807 of 2014 in O.S.No.171 of 2012 on the file of the learned Principal District Munsif, Thiruvannamalai District.

2. According to the petitioners/defendants, the respondent/plaintiff filed a suit in O.S.No.171 of 2012 against the petitioners seeking permanent injunction on the file of the learned Principal District Munsif, Thiruvannamalai. In the aforesaid suit, the petitioners/defendants filed an application in I.A.No.807 of 2014 under Order 26 Rule 9 of CPC to appoint an Advocate Commissioner to note down the physical features with the help of land Surveyor and ascertain as to whether the petition mentioned property is public road or there is any construction and to submit his report. The said application was dismissed by the Court below on 01.03.2016. Challenging the said order, the present Civil Revision Petition has been filed.

3. The learned counsel for the petitioners submitted that the respondent had put up a shed in the suit property and she is in continuous possession and enjoyment of the same. Therefore, to ascertain the nature of the property, the present application has been filed by the petitioners. Without considering the prayer sought for by the petitioners, the Court below erroneously dismissed the application. Hence, the impugned order is liable to be set aside.

4.Per contra, the learned counsel for the respondent submitted that the petitioners already filed an application in I.A.No.590 of 2012 for the very same relief and the same was dismissed on 22.08.2013. The petitioners, suppressing the above fact, filed the present application for the very same relief.

5.The learned counsel for the respondent further submitted that the respondent filed a suit for permanent injunction and the factum of possession has to be decided only on the oral and documentary evidence. Moreover, the respondent had not put up any shed in the suit property and she constructed her house on the eastern side of the suit property. Therefore, the application filed by the petitioners is nothing but to collect the materials to decide the factum of possession and hence, the Court below assessed all facts and rightly dismissed the application.

6.Further, the learned counsel for the respondent in support of his submissions relied on the decisions in **P.Chakraborty and Sanjib Kumar Mal, Advs. vs. Sudhish Das Gupta and S.Ghosh, Advs. (AIR 2000 Ca 189)** and **K.M.A.Wahab and 5 others vs. Eswaran and another (2008 (3) CTC 597)**.

7. Heard the learned counsel for the petitioners and the learned counsel for the respondent and perused the materials available on record.

8. On a perusal of the records, it is seen that the petitioner filed I.A.No.807 of 2014 for appointment of Advocate Commissioner to note down the physical features with the help of land surveyor and ascertain as to whether the petition mentioned property is public road or there is any construction and submit his report and plan cannot be granted as the petitioner already filed the application for the very same relief.

9. Apart from that, the learned counsel for the respondent relied on the decision in **P.Chakraborty and Sanjib Kumar Mal, Advs. vs. Sudhish Das Gupta and S.Ghosh, Advs. (AIR 2000 Ca 189)**, wherein, it was held that *"the elementary principles of law by passing impugned order, despite fact that relief claimed in second application had been refused earlier. Therefore, the second application was not maintainable"*.

10. The learned counsel also relied on yet another decision in

K.M.A.Wahab and 5 others vs. Eswaran and another (2008 (3) CTC 597), wherein, it is held that *"as far as the factum of possession is concerned, the Court alone gather evidence through the parties and it cannot entrust the said matter to the Advocate Commissioner to collect the evidence."*

11. Considering the facts and circumstances of the case, aforesaid submissions made by the learned counsel for the respondent that nothing to collect the factum of possession of the parties concerned, this Court is not inclined to interfere with the orders passed by the trial court, as there is no error or illegality and pass the following order:

"The order dated 01.03.2016 passed in I.A.No.807 of 2014 in O.S.No.171 of 2012 by the learned Principal District Munsif, Thiruvannamalai District is confirmed.

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The Civil Revision petition is dismissed with the above observations. No costs.

D.KRISHNAKUMAR,J.

cla

Consequently, connected miscellaneous
petition is closed."

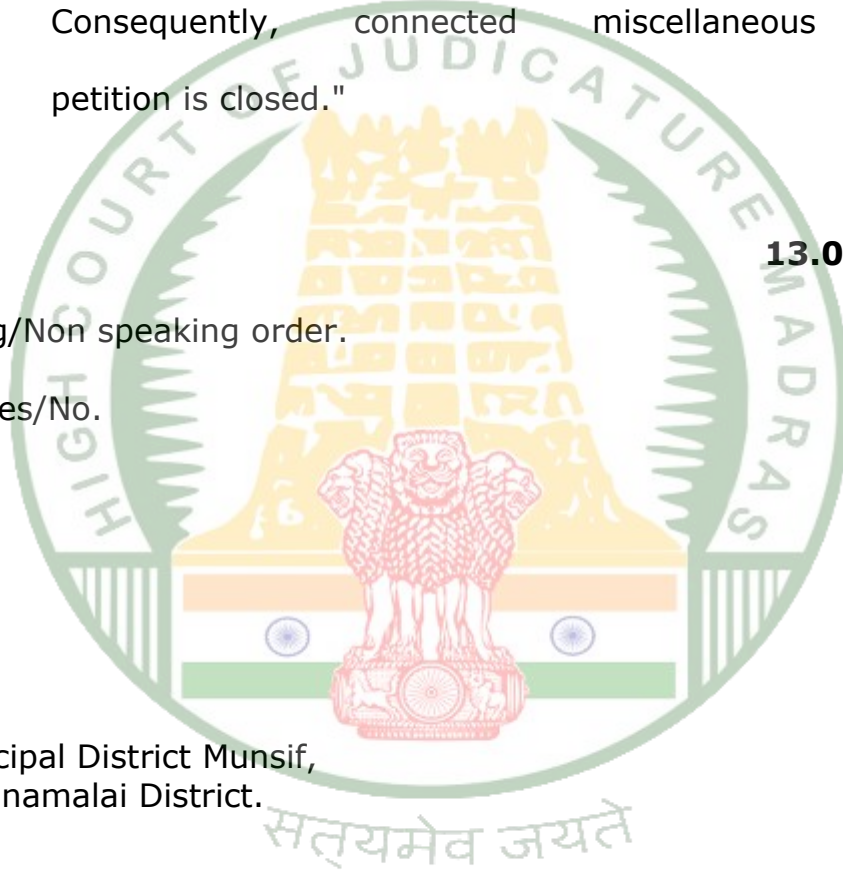
13.03.2018

Speaking/Non speaking order.

Index: Yes/No.

To

The Principal District Munsif,
Thiruvannamalai District.



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