

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P.(PD) No.560 of 2019

and

C.M.P.No.3747 of 2019

Thambana Gounder (died)

1. Nachammal
2. Duraisamy
3. Ponnathal
4. Chandrambal

.. Petitioners

VS.

N.Santha

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 05.10.2018 made in I.A.No. 1075 of 2017 in O.S.No. 35 of 2017 on the file of the learned District Munsif Court, Kangayam, Tiruppur District.

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For Petitioners : Mr.N.Manokaran

For Respondent : Mr.S.Kaithamalai Kumaran

ORDER

The above Civil Revision Petition has been filed challenging the order passed by the learned District Munsif, Kangayam, Tiruppur District in I.A.No.1075 of 2017 in O.S.No. 35 of 2017, where the learned Judge has appointed an Advocate Commissioner to note down the physical features of the suit property, in a suit filed for a bare injunction.

2. Without narrating the facts, this Court is only considering the correctness of the impugned order. Time and again, this Court has deprecated the practice of having an Advocate Commissioner appointed in a suit for a bare injunction, which is nothing but an attempt to collect the evidence on behalf of the parties. The parties are only called upon to prove their possession and the same can be done by filing documents and there is no necessity to note down either the physical features or the possession of the property. The learned Judge has over looked this principle and has proceeded to appoint the Advocate Commissioner, only on the ground that, if the physical features are noted down, it would held the Court to come to the conclusion. This observation of the learned Judge is erroneous as the report of the Advocate Commissioner would only be pieces of evidence which cannot be accepted.

3. The order passed in I.A.No.1075 of 2017 in O.S.No. 35 of 2017 before the learned District Munsif Court, Kangayam, Tiruppur District is set aside.

4. With the above observations, the Civil Revision Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

18.03.2019

Index: Yes/No
speaking/ Non speaking order
mbi / vji

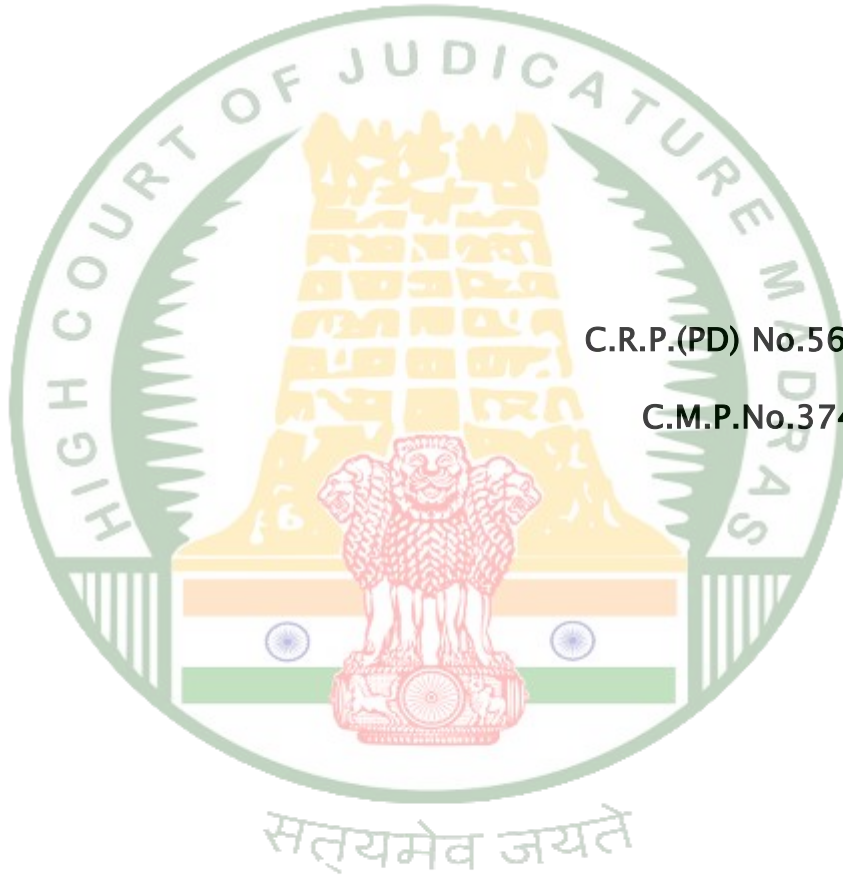
To

The learned District Munsif Court,
Kangayam,
Tiruppur District

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P.T. ASHA, J.

mbi/vji



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