

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. PD 2256 of 2015

and

M.P. 1 of 2015

1. R.Chandrasekar
2. C.Venkatapathy
3. C.Ravi

... Petitioners

Vs.

1. A.Arunagiri
2. R.Sivakozhundu

... Respondents

Prayer :- This Civil Revision Petition has been filed under Art.227 of Constitution of India, praying to set aside the petition and order dated 19.11.2014 passed in I.A. 884 of 2014 in O.S. 312 of 2014 on the file of the learned Addl. District Munsif Court, Cuddalore.

For Petitioners : Mr.R.Gururaj

For Respondents : Mrs.R.Meenal

ORDER

This Civil Revision Petition has been filed against the order allowing the 1st respondent/plaintiff application appointing the Advocate Commissioner.

2. The petitioners are the defendants 1 to 3 in the Suit. The 1st respondent/plaintiff has filed a suit for permanent injunction restraining the petitioners from interfering with their peaceful possession and enjoyment of the suit property. Pending suit, the plaintiff has filed an application to appoint Advocate Commissioner to note down the physical features, and the Trial Court had allowed the application without conducting any enquiry. Challenging the same, the present Civil Revision Petition has been filed.

3. Mr.R.Gururaj, learned counsel appearing for petitioners would contend that, in a suit for injunction, there is no necessity to appoint advocate commissioner. Further, the Advocate Commissioner cannot be appointed for the purpose of collecting evidence. That apart, the Trial Court without conducting any

enquiry, and without giving opportunity to the petitioners, has appointed the Advocate Commissioner. Hence, the order passed by the Trial Court is illegal, and the same is liable to be set aside. The learned counsel appearing for petitioners would further submit that, the petitioners have already filed an application in I.A.No.25 of 2015 under Order 2 Rule 2 of C.P.C., that application is still pending, and no order has been passed, pending the same, the present application has been filed.

4. Per contra, Mrs.R.Meenal, learned counsel appearing for respondents would contend that, even though the suit filed for injunction, the Advocate Commissioner was sought to be appointed only to note down the physical features of the property, and not for the purpose of showing possession of the plaintiff. By appointing Advocate Commissioner to note down the physical features, no prejudice would be caused to the petitioners. That apart, pending revision, the Advocate Commissioner has inspected the property and also filed a report. The petitioners have also filed their objections, which was also taken on record. At this stage, the order of Trial Court

need not be interfered.

5. I have heard and considered the rival submissions made by learned counsel appearing for petitioners as well as learned counsel appearing for respondents and perused the records carefully.

6. Considering the fact that, the Advocate Commissioner was appointed in the year 2014. The Advocate Commissioner has already inspected the property and filed his report. For which, the petitioners have also filed their objections, and it was also taken on record. Therefore, I am of the considered view that, at this stage, the order of the court below need not be set aside. However, the Trial Court is directed to consider the petitioners objections at the time of trial. So far as the application filed by the petitioners under Order 2 Rule 2 of C.P.C. in I.A.No.25 of 2015 is concerned, that application is pending for more than four years, and the Trial Court is directed to dispose the application within a period of eight

weeks from the date of receipt of the copy of this order.

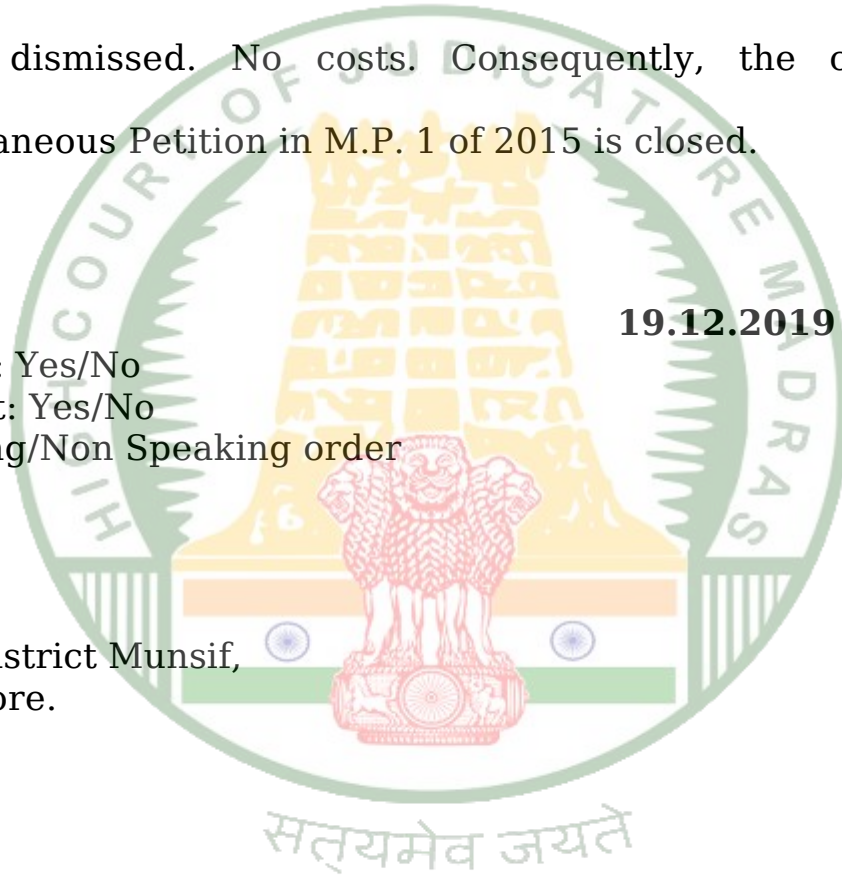
7. With the above direction, this Civil Revision Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition in M.P. 1 of 2015 is closed.

19.12.2019

Index : Yes/No
Internet: Yes/No
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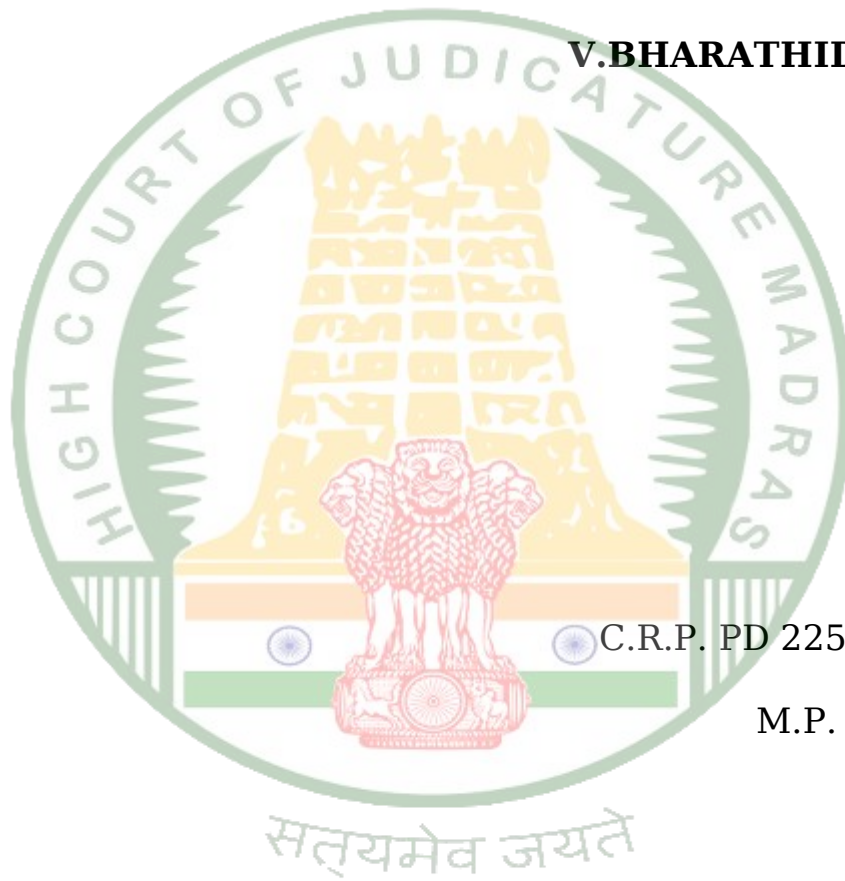
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V.BHARATHIDASAN,J.

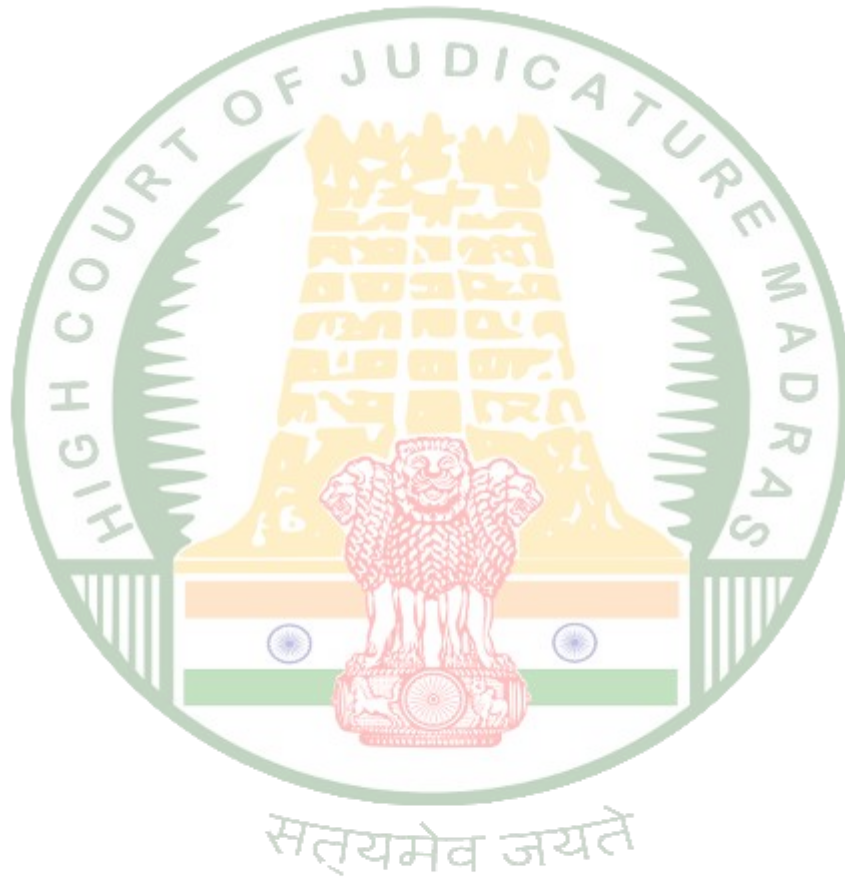
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