

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. PD 4479 of 2015
and
M.P. 1 of 2015

1. M.Balakrishnan
2. M.Paranthaman ... Petitioners

Versus

C.Manikandan ... Respondent

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the petition and order of the Principal District Munsif, Gingee dated 18.09.2015 in I.A.No.1339 of 2015 in O.S.No.322 of 2015.

For Petitioners : Mr.Saikrishnan for
M/s.Sai Bharath and Ilan

ORDER

This Civil Revision Petition has been directed against the order of appointing an Advocate Commissioner to find out the possession of the respondent in respect of the suit property.

2. Even though notice served on the respondent, none appeared on behalf of respondent.

3. The respondent/plaintiff has filed a suit for declaration, and also for permanent injunction against the petitioners. Pending Suit, the respondent has filed an application to measure the suit property with the help of Surveyor and file a report. The Trial Court had passed an exparte order appointing the Advocate Commissioner to find out the possession of the petitioners with the help of Firka Surveyor and file a report. Challenging the same, the present Civil Revision Petition has been filed.

4. I have heard and considered submissions made by learned counsel appearing for petitioners and perused the records carefully.

5. The application has been filed on the ground that, the suit properties were in possession and enjoyment of plaintiff's mother. On 29.07.2010, the plaintiff's mother has executed a

settlement deed in his favour. Thereafter, the plaintiff alone is in possession and enjoyment of the same. Now, the defendants are trying to interfere with his possession. Hence, the present application has been filed to measure the property. The Trial Court after considering the materials, had passed an exparte impugned order, thereby appointing a Commissioner to find out the possession of plaintiffs with the help of Surveyor. It is settled law that, for the purpose of finding out possession of the suit property, the Commissioner cannot be appointed, it is only amounting to collecting evidence, which is not permissible. Without considering any of the contentions, the Court below mechanically allowed the application appointing the Commissioner to find out the possession of plaintiff. In the above circumstances, the order passed by the court below is liable to be set aside. Accordingly, the petition and order dated 18.09.2015 passed by the learned Principal District Munsif, Gingee in I.A. 1339 of 2015 in O.S. 322 of 2015 is set aside.

6. However, considering the fact that the suit is pending from the year 2015, the Trial Court is directed to proceed with the trial, and dispose the same within a period of six months from the date of receipt of the copy of this order. In the result, this Civil Revision Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition in M.P. 1 of 2015 is closed.

12.12.2019

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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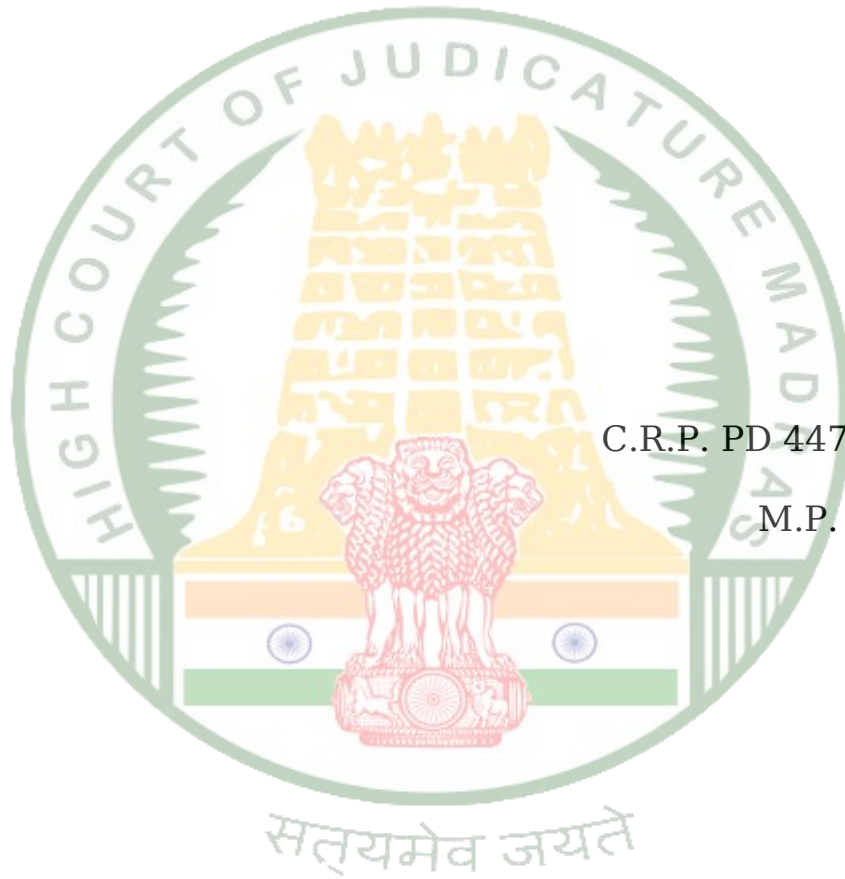
To

Principal District Judge,
Principal District Munsif Court,
Gingee.

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V.BHARATHIDASAN,J.

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