

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P(NPD) No.3577 of 2013

and

M.P.No.1 of 2013

A.Periyanayagasamy

... Petitioner/Plaintiff

Vs.

1. The President,
Andimadam Panchayat,
Andimadam-621 701.
Ariyalur District.

2. The Commissioner,
Panchayat Union,
Andimadam-621 701.
Ariyalur District.

... Respondents/Defendants

PRAYER: The Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 01.07.2013 made in E.P.No.50 of 2011 in O.S.No.192 of 2010, on the file of the District Munsif Court, Jayankondam.

For Petitioner : M/s.Elizabeth Rani

For Respondents : Mr.D.Suriyanarayanan

ORDER

This Civil Revision Petition has been filed as against the order of the Execution Court, dismissing the Execution Petition in E.P.No.50 of 2011, filed to enforce the decree and judgment passed in O.S.No.192 of 2010, wherein, the suit has been decreed declaring the easement right of plaintiff over the suit property and Consequentiality, passing an order of permanent injunction, restraining the defendants their men, servants, agents, contractors in any manner interfering with the plaintiff peaceful possession and enjoyment over the suit property by doing any kind of act depriving the accrued right of the plaintiff over the suit property.

2. After passing decree, the Execution Petition has been filed on the ground that the judgment debtor disobeyed the order of the Court and prayed for civil arrest of the judgment debtor. The Execution Court passed an order dated 01.07.2013 following dismissed.

" For consideration and orders. Perused. This petitioner is for civil arrest of R1, R2 for their disobey the decree dated 29.09.2010. In that Suit in O.S.No.192 of 2010, the petitioner claims easementary right over the suit properties and consequential permanent

injunction. So, heavy burden is lies upon the petitioner in this case because since it is perusal provision, it is for the petitioner to prove beyond reasonable doubt. On perusal of photos filed by the petitioner and also other documents there is a doubt regularising the S.F.Nos. Whether the passenger shed is in the suit S.F.No.283/7-A or 281. In this circumstances this petition fails and consequently dismissed. No cost."

3. I am of the view, that order passed by the trial Court per se illegal for the simple reason that when there is a dispute with regard to the survey number, the Executing Court ought to have given opportunities to the parties to adduce oral and documentary evidence, to prove whether there is disobedient or not?

4. Therefore, such being position merely on the basis of photographs, Executing Court ought not to have dismissed the application without any oral evidence. The Executing Court had come to the conclusion that there is a doubt in survey number and without conducting any enquiry, had dismissed the Execution Petition mechanically which is not correct, accordingly order of the court below is set aside.

N.SATHISH KUMAR, J.

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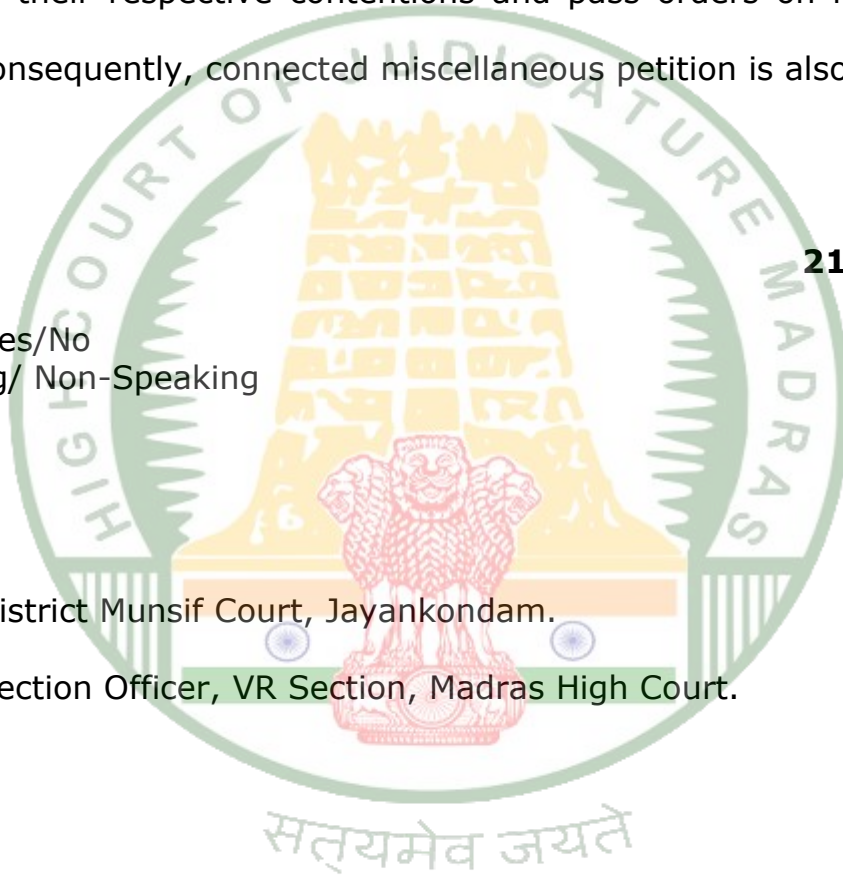
5. Accordingly, this Civil Revision Petition is allowed and the Executing Court is also directed to give opportunity to the parties to prove their respective contentions and pass orders on merits. No costs. Consequently, connected miscellaneous petition is also closed.

21.02.2019

Index: Yes/No
Speaking/ Non-Speaking
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To

1. The District Munsif Court, Jayankondam.
2. The Section Officer, VR Section, Madras High Court.



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