

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2019

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(NPD)No.1918 of 2019

and

CMP.No.12621 of 2019

Vaithianathan

... Petitioner

Vs.

1.Jegadeesan

2.Senthilkumar

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC against the fair and decreetal order dated 04.01.2019 dismissing the application in REA.No.20 of 2018 in REP.No.4 of 2018 in O.S.No.67 of 2003 on the file of District Munsif Cum Judicial Magistrate, Valapady.

For Petitioner : Mr.P.Jagadeesan

For Respondents : Mr.R.Gokulakrishnan [for RR1 &2]

ORDER

The respondents are plaintiffs in the suit. The respondents filed a suit for declaration of title in respect of 14 cents of land in Survey No.257/3 in Masinaickanpatti Village and a channel running through

Survey Nos.257/1B, 257/1C, 257/1D, 257/1E and finally reaching S.No.257/3 and for mandatory injunction to demolish the encroached portion of the land to restore the suit properties. The trial Court decreed the suit and it was confirmed by the Lower Appellate Court. Challenging, the order of the Lower Appellate Court, second appeal has been preferred and the same is pending in S.A.No.971 of 2013 before this Court. The respondents/deGREE holders filed an Execution Petition before the Executing Court for delivery of possession, in which, the present revision petitioner/judgment debtor, filed an Interlocutory Application under Section 47 of CPC that the suit property is not in possession of the revision petitioner, as admitted by the respondents/deGREE holder during cross examination, in a connected suit between the same parties. It is not clear what was the suit property in that case. However, the petitioner/judgment debtor claimed that since it is admitted by the respondents/deGREE holder that he is in possession of the suit property and he is not entitled to execute the decree.

2. During the pendency of the suit an Advocate Commissioner was appointed in I.A.No.140 of 2003 and the Commissioner filed a report before the Court showing the encroachment.

3. Now that the revision petitioner/judgment debtor submits that he has no objection for appointing an Advocate Commissioner if the

execution of decree is done in accordance with decree passed by the Additional District Court, Salem in O.S.No.67 of 2003 dated 20.01.2010.

4. Considering the submission made by the learned counsel for the petitioner, a direction is issued to the Executing Court to proceed further in executing the decree for delivery of vacant possession, after appointing a fresh Advocate Commissioner, to identify the portion of the suit property, which is under possession of the petitioner/judgment debtor. The Advocate Commissioner shall also execute the warrant taking into consideration the Commissioner's report submitted in IA.No.140/2003.

5. The Civil Revision Petition is disposed of with the above observation and direction. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

11.07.2019

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NOTE: Issue order copy on 18.09.2019

Index:Yes/No

Internet:Yes/No

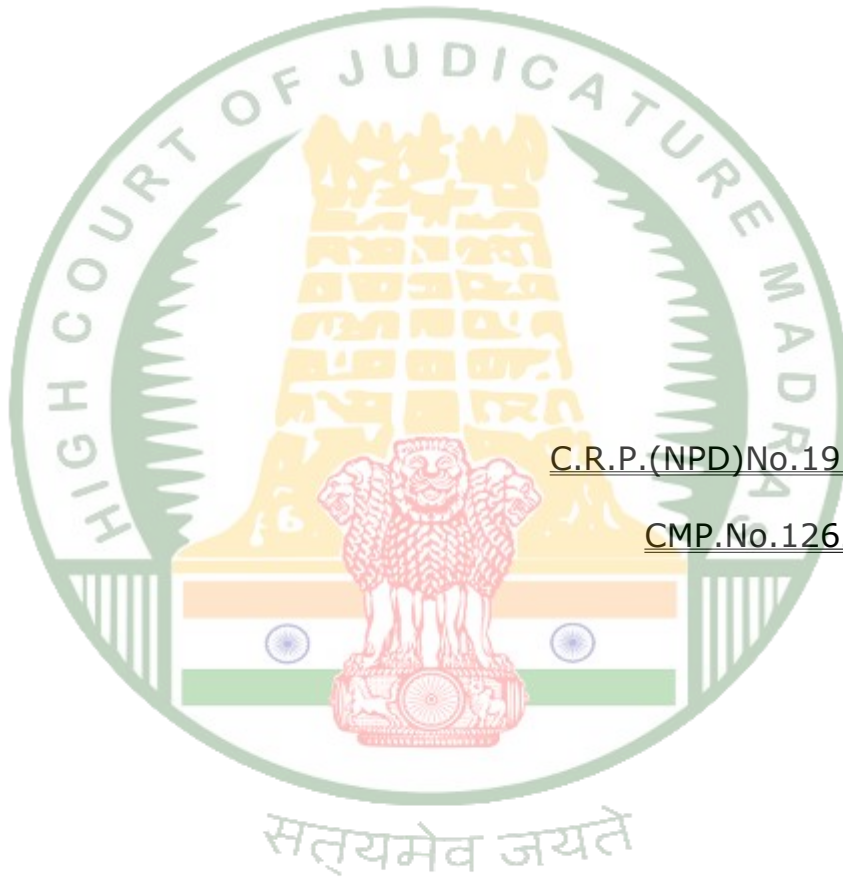
Speaking Order/Non Speaking Order

To

The District Munsif Cum Judicial Magistrate,
Valapady.

M. GOVINDARAJ, J.

bri



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