

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(PD).No.1213 of 2019

V.Ranganathan .... Petitioner

Vs.

T.Sundaresan .... Respondent

Civil Revisions Petition filed under Section 227 of Constitution of India against the fair and final order passed in I.A.No.479 of 2018 in O.S.No.287 of 2013 on the file of II Additional Subordinate Judge, Erode dated 03.01.2019.

For Petitioner : M/s.Maha Mandra Rajalakshmi  
for M/s.V.Kadhirvelu

ORDER

Challenging the fair and decreetal order dated 03.01.2019 passed in I.A.No.479 of 2018 in O.S.No.287 of 2013 on the file of the II Additional Subordinate Court, Erode, the present civil revision petition has been filed.

2. When the suit was taken up for trial, the 6th defendant filed an application in I.A.No.479 of 2018 seeking for appointment of Advocate

Commissioner to note down the physical features of the suit property. The application was opposed by the plaintiff. The trial Court, after taking into consideration the case of both the parties, dismissed the application finding that the plaintiff has sought for only partition in the suit.

2. The learned counsel for the revision petitioner submitted that during the course of cross examination of PW1, he has deposed that the suit property is a vacant land. The suit in question is for partition. Though the plaintiff has stated that he had no objection for the appointment of Advocate Commissioner, however in the counter it has been categorically stated that the suit is for partition and there is no dispute with reference to description and identity of the property and there is also no need to appoint an Advocate Commissioner to inspect the suit property and note down the physical features of the same. Considering all these facts, the learned II Additional Subordinate Judge, Erode dismissed the application, against which the present civil revision petitioner is before this Court. The learned counsel for the revision petitioner also submitted that the reason for seeking appointment of Advocate Commissioner is only on the ground that the plaintiff has stated that the suit property is vacant land whereas it is not so, particularly, when the plaintiff has no objection to the same. As submitted by the learned counsel for the revision petitioner the suit is one

for partition in which the Court is called upon to consider as to whether the plaintiff is entitled for share in the property and if so, to declare the said share. There is no dispute either in the description of the property or identifying the property, but it is only to prove as to whether the property is vacant land or otherwise an Advocate Commissioner is sought to be appointed. This is, in fact, trying to note down who is in possession of the property, for which, Advocate Commissioner cannot be appointed. Hence, the trial Court has rightly dismissed the said application.

3. In these circumstances, I do not find any error or irregularity in the order passed by the trial Court. Accordingly, the Civil Revision Petition is dismissed. No costs.

**22.04.2019**

Speaking order/Non-speaking order

Index : No

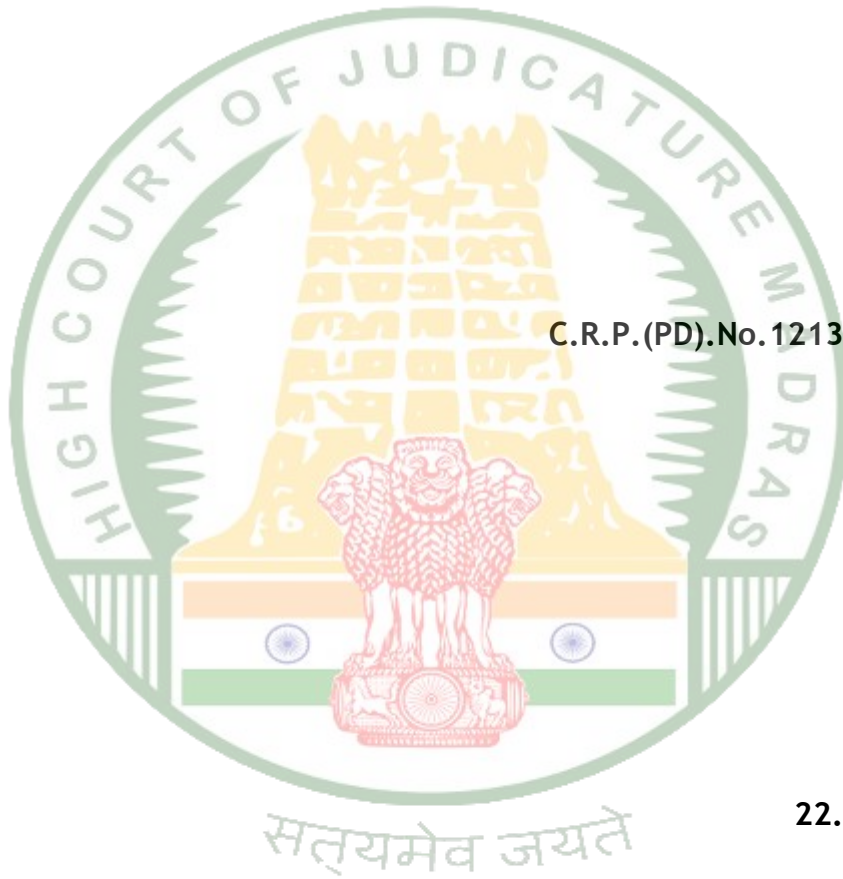
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