

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.2255 of 2018

and

C.M.P.No.14154 of 2018

Kuppusamy

... Petitioner

-VS-

1.Kailasam

2.The District Collector,
Erode,
Erode District.

3.The Tashildar,
Anthiyur,
Erode District.

... Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.632 of 2017 in O.S.No.82 of 2016, dated 11.07.2017 on the file of Principal District Munsif Court, Bhavani, Erode District.

For Petitioner :

Mr.S.P.Yuaraj

For Respondents :

Mr.N.Manokaran for R1

Mr.S.Jaganathan,
Government Advocate(C.S)
for R2 & R3

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned Principal District Munsif, Bhavani in I.A.No.632 of 2017 in O.S.No.82 of 2016, dismissing the Application filed by the Revision Petitioner/third party to be impleaded as a party/Defendant in the Suit filed by the First Respondent.

2.The First Respondent has filed a Suit in O.S.No.82 of 2016 for bare injunction against the District Collector and the Tahsildar stating that they are attempting to disturb his peaceful possession of the Suit property.

3.The third respondent/Tahsildar has filed a written statement in which he has categorically stated that the first respondent has no right over the Suit property and that there is no material document to prove the same. In the meantime, the revision petitioner, during the pendency of the Suit, has taken out the impugned petition to implead himself as a party to the proceedings and the same has been dismissed by the learned Principal District Munsif, Bhavani, on the ground that the petitioner has not filed any document to show that he is the legal heir of Kaveriammal. Challenging the same, the

4.The learned counsel for the first respondent/plaintiff relied on a judgment passed in the case of Kanaklata Das and others Vs. Naba Kumar Das and others reported in (2018) 2 SCC 352, in which, it was held that in a Suit for bare injunction, the impleadment of third parties is required only when the Suit touches the question of title over the property.

5.Heard, both sides and also perused the materials placed on record.

6.From the perusal of the plaint, it is seen that despite knowing that there were third party claiming title over the property in question, the plaintiff has not impleaded them as necessary parties in the Suit and the third respondent/Tahsildar has categorically stated that the plaintiff is not the owner of the Suit property and that the Suit property has been assigned to one Kaveriammal on 12.10.1999. In the light of the overwhelming statements, the first respondent/plaintiff ought to have impleaded the legal heir of Kaveriammal as necessary party in the Suit. Such a step has not been taken by the first respondent/plaintiff, which raises serious doubt in the mind of this Court that by getting an order of bare injunction, the first respondent/plaintiff is going to

create an encumbrance on the title of the true owner. Therefore, the presence of the true owner is also required in such a Suit. The learned Principal District Munsif, Bavani has not considered the above fact. Therefore, the order of the learned Principal District Munsif, Bhavani in I.A.No.632 of 2017 in O.S.No.82 of 2016 is set aside.

7.In the result, the Civil Revision Petition is allowed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

20.03.2019

Index : Yes/No

Internet : Yes / No

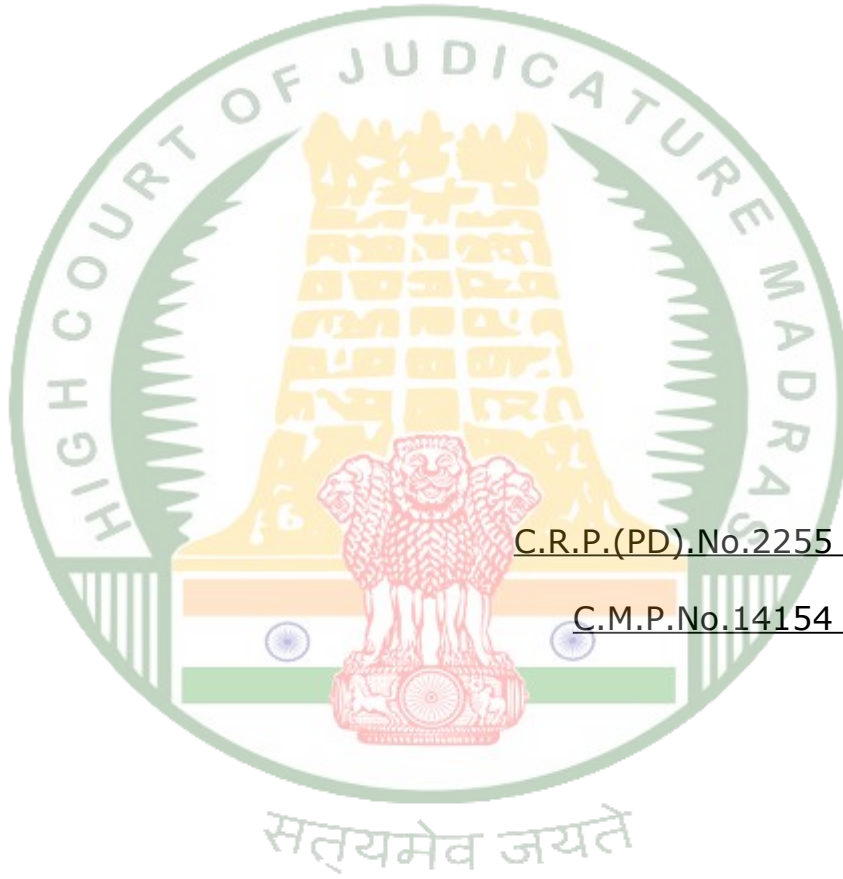
Speaking/non-speaking order
tsg

To
Principal District Munsif Court,
Bhavani, Erode District.

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P.T.ASHA.J.,

tsg



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