

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(PD).No.1881 of 2014
and M.P.No.1 of 2014

1.K.Senthilmurugan

2.R.Krishnaveni

3.T.Sathyaveni

4.G.Rathanambal

... Petitioners

Vs.

1.M.Palanisamy

2.U.Palanisamy

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India, to set aside the order made in I.A.No.255 of 2014 in O.S.No.49 of 2014, dated 17.04.2014 on the file of the District Munsif, Polladam, Tirupur District.

For Petitioners : Mr.C.Veeraraghavan
 For Respondents : Mr.Krishnaprasad for
 M/s.Sarvabhauman Associates

ORDER

The present Civil Revision Petition has been filed against the order dated 17.04.2014 in I.A.No.255 of 2014 in O.S.No.49 of 2014

passed by the District Munsif Court, Palladam.

2.The petitioners had filed O.S.No.151 of 2014 before the Subordinate Judge, Tirupur for a permanent injunction restrain the respondents from interfering with the peaceful possession and enjoyment of the suit property.

3.The petitioners therein had also filed I.A.No.143 of 2014 in O.S.No.151 of 2014, for an interim injunction restraining the respondents from interfering with the peaceful possession and enjoyment of the suit property. The said I.A was allowed on 25.03.2014.

4.Thereafter, the respondents filed another suit in O.S.No.49 of 2014 before the District Munsif Court at Palladam for a permanent injunction restraining the petitioners from interfering with their peaceful use and possession and enjoyment of the suit properties mentioned in the plaint plan as "A B".

5.The respondents therein had also filed I.A.No.255 of 2014 in O.S.No.49 of 2014 to appoint an Advocate Commissioner to note down the physical features of the suit properties and to take photographs and to file a detailed report and plan into the Court. There an exparte order was passed on 17.04.2014 appointing an Advocate

Commissioner.

6. Aggrieved by the same, the petitioners have filed the present Civil Revision petition.

7. The Advocate Commissioner also issued notice to the petitioners proposing to inspect the suit properties on 25.04.2014 at about 4.00 pm.

8. The petitioners therefore replied to the notice of the Advocate Commissioner by way of R.P.A.D dated 22.04.2014 and stated that already suit in O.S.No.151 of 2014 was pending before the Subordinate Court, Tirupur where the petitioner had obtained an interim injunction not to disturb the peaceful possession and enjoyment of the suit properties from the respondents.

9. The Advocate Commissioner appointed by the Court replied on 23.04.2014 stating that she had already visited the suit property on 18.04.2014 as per the urgency memo of the counsel for the respondents and therefore proposed to visit the property again on 19.04.2014. The Advocate Commissioner has further stated that she proposed to visit on 25.04.2014 in obedience of the Court orders.

10. Under these circumstances, the petitioners have come

forward by way of the present Civil Revision Petition to set aside the order passed in I.A.No.255 of 2014 in O.S.No.49 of 2014 dated 17.04.2014.

11.The Advocate Commissioner has shown undue alacrity in proceedings with the execution of warrant even though the counsel for the petitioners had given the above details.

12. Thereafter, the present Civil Revision Petition was filed on 19.05.2014 and an interim order was obtained on 22.05.2014 during summer vacation of this Court. Thereafter, the present Civil Revision Petition is listed for the first time today.

13. The impugned exparte order was passed by the learned District Munsif Court, Palladam in I.A.No.255 of 2014 in O.S.No.49 of 2014 unaware of the pendency of earlier suit in O.S.No.151 of 2014 before the Sub Court, Tirupur.

14.Therefore, the impugned order is liable to be set aside and the present Civil Revision Petition deserves to be allowed with few observations.

15. Both the suits are arising out of the same bundle of facts.

Therefore, the District Munsif Court is directed to transfer the case in O.S.No.49 of 2014 to the Sub Court, Tirupur for a joint trial along with the O.S.No.151 of 2014.

16. The learned Sub Judge, Tirupur, may independently take a decision as to whether the appointment of an Advocate Commissioner is required to arrive at the correct conclusion on facts.

17. Since, both the suits are of the year 2014, the learned Sub Judge, Tirupur shall endeavour to complete the trial jointly and pass a common judgment and separate decree in the two suits within a period of nine months from the date of receipt of copy of this order.

18. The present Civil Revision Petition is allowed with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No
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To

1. The District Munsif Court,
Palladam.

2. The Sub Court, Tirupur.

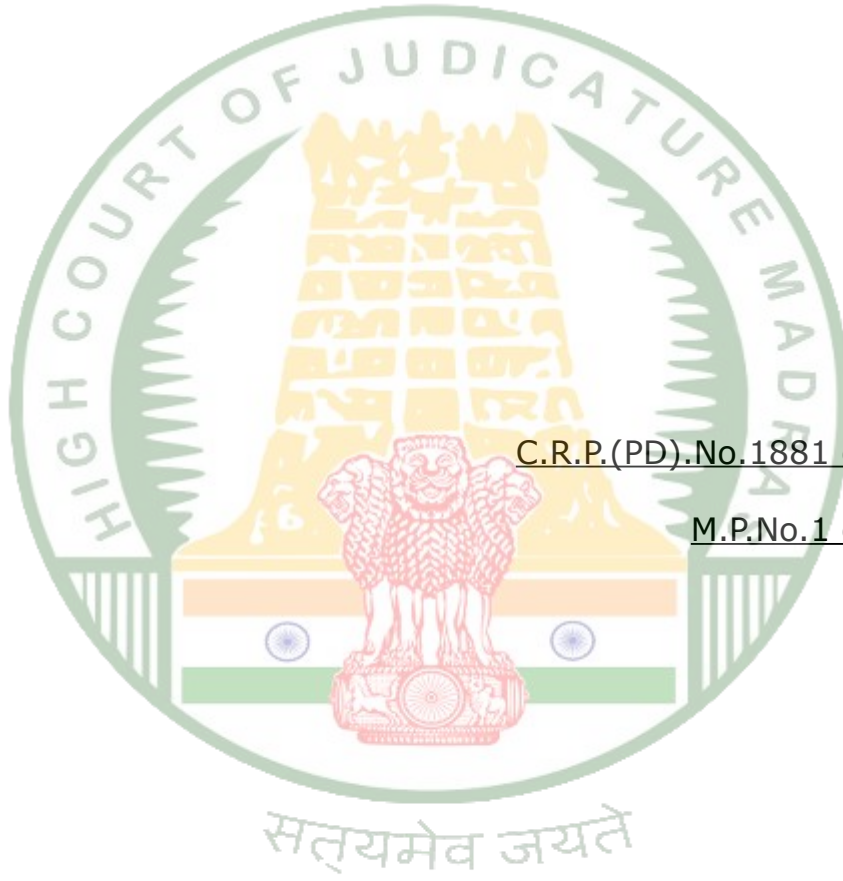
3.The Section Officer, V.R.Section,
High Court, Madras.



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C.SARAVANAN, J.

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