

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.11.2019

PRONOUNCED ON : 11.11.2019

CORAM

THE HONOURABLE Mr. JUSTICE **R.PONGIAPPAN**

C.R.P.PD.No.2819 of 2014
and M.P.No.1 of 2014

B.Suresh

... Petitioner

Vs

1. P.Manikandan

2. M.Savithry

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 01.03.2014 made in I.A.No.176 of 2014 in O.S.No.461 of 2010 on the file of the Principal District Munsif Court, Poonamallee.

For Petitioner : Mr.X.Selvam Sounder

For Respondents : Mr.P.Veeraraghavan

ORDER

Aggrieved over the order dated 01.03.2014 made in I.A.No.176 of 2014 in O.S.No.461 of 2010 passed by the learned Principal District Munsif, Poonamallee, the petitioner, who is the first defendant in the said suit, filed this Civil Revision Petition.

2. Before the trial Court the respondents 1 & 2 in this revision petition filed a suit in O.S.No.461 of 2010 as against the petitioner and the Assistant Engineer, Tamilnadu Electricity Board, Gandhi Nagar, Avadi, Chennai, for the relief of permanent injunction. When the suit was posted for trial, the petitioner herein filed an application under Order 26 Rule 9 of C.P.C., for appointing an Advocate Commissioner to note down the physical features of the suit property and to identify the same.

3. The learned Principal District Munsif, Poonamallee, after affording opportunities to the respondents herein, by an order dated 01.03.2014, dismissed the said application by stating that the application was filed by the petitioner to find out the fact that in whose possession, the suit mentioned property was available. The learned Principal District Munsif, Poonamallee, further observed that the possession of the suit property has to be proved by the parties only through documents and not by way of appointing the Advocate Commissioner. Challenging the said findings the petitioner is before this Court with the prayer to set aside the order dated 01.03.2014 and to allow the application filed in I.A.No.176 of 2014, for appointment of

Advocate Commissioner.



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4. Today when this petition is taken up for hearing, the learned counsel appearing for the petitioner is present and made a submission that on 17.05.2011 itself, the petitioner and the respondents had entered into a sale agreement, for which, the petitioner paid a sum of Rs.1,50,000/- to the respondents. Subsequent to the said agreement, the respondents herein were handed over the possession of the suit property to the petitioner and as of now, the petitioner is in the possession of the suit property. Hence, in the said circumstances to note down the physical features, appointment of Advocate Commissioner is very much necessary. But the learned Principal District Munsif, Poonamallee, without considering the said aspects wrongly construed as the petitioner has attempted to collect the materials, which is erroneous in law.

5. On the other hand, the learned counsel appearing for the respondents would contend that already at the time of filing the suit, the respondents filed an application in I.A.No.1248 of 2010 for the relief of temporary injunction and the said application was allowed on 02.04.2012. Thereafter, the suit property is in the possession of the respondents/plaintiffs. As against the order of temporary injunction,

the petitioner has not filed any appeal. In the said situation, appointment of Advocate Commissioner to note down the physical features is unnecessary.

6. The arguments advanced by learned counsel on either side are considered.

7. In the affidavit filed by the petitioner, in support of the petition filed under Order 26 Rule 9 of C.P.C., the petitioner has stated that the suit mentioned property is in his possession. On the other hand, on going through the averments contended in the counter affidavit filed by the respondent, he has stated that the suit property is in the exclusive possession of the respondents/plaintiffs. In support of their claim, the respondents have stated that the order of interim injunction is in favour of the respondents/plaintiffs.

8. Originally the suit has been filed for the relief of permanent injunction, for availing the said relief, the person who wants the said relief, has to prove his lawful possession. In other words, it is a settled proposition that the possession cannot be identified by way of

appointing the Advocate Commissioner. Proving the possession of the suit property is an exclusive matter of evidence. Further, since the respondents are the plaintiffs in the said suit, they are having the duty to prove their possession. In the said circumstances, the petitioner herein claimed that the property is in his possession and attempted to disprove the case of the respondents/plaintiffs, by way of appointing Advocate Commissioner, which is unnecessary.

9. In the judgment reported in **2005(3) MLJ 473** in the case of **Chandrasekaran & others Vs. Doos Naidu**, this Court has observed that proving the possession has to be done only by way of producing Will and evidences and not in otherwise. Though, on 17.05.2011, the first respondent in this revision petition gave an undertaking to vacate the house, the same has to be proved before the trial Court and the said undertaking letter dated 17.05.2011, may be the prima facie evidence on the side of the petitioner/first defendant. Since the petitioner has filed this Civil Revision Petition as against the findings arrived in I.A.No.176 of 2014, this Court cannot look into the averments made in the undertaking letter. The genuinity of the undertaking letter has to be decided only by the Court below during the

trial.

10. In view of the above discussion, I am of the considered opinion that the order dated 01.03.2014, passed by the learned District Munsif, Poonamallee, in I.A.No.176 of 2014, is not having any material irregularity and accordingly, this Civil Revision Petition is liable to be dismissed. However, since the suit pertains to this revision petition has been filed in the year 2010, it is necessary to give some directions to the trial Court to dispose the matter in a time bound manner. Accordingly, the learned Principal District Munsif, Poonamallee, is directed to dispose the suit in O.S.No.491 of 2010, as early as possible, preferably within a period of three months from the date of the receipt of a copy of this Order.

11. In the result, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

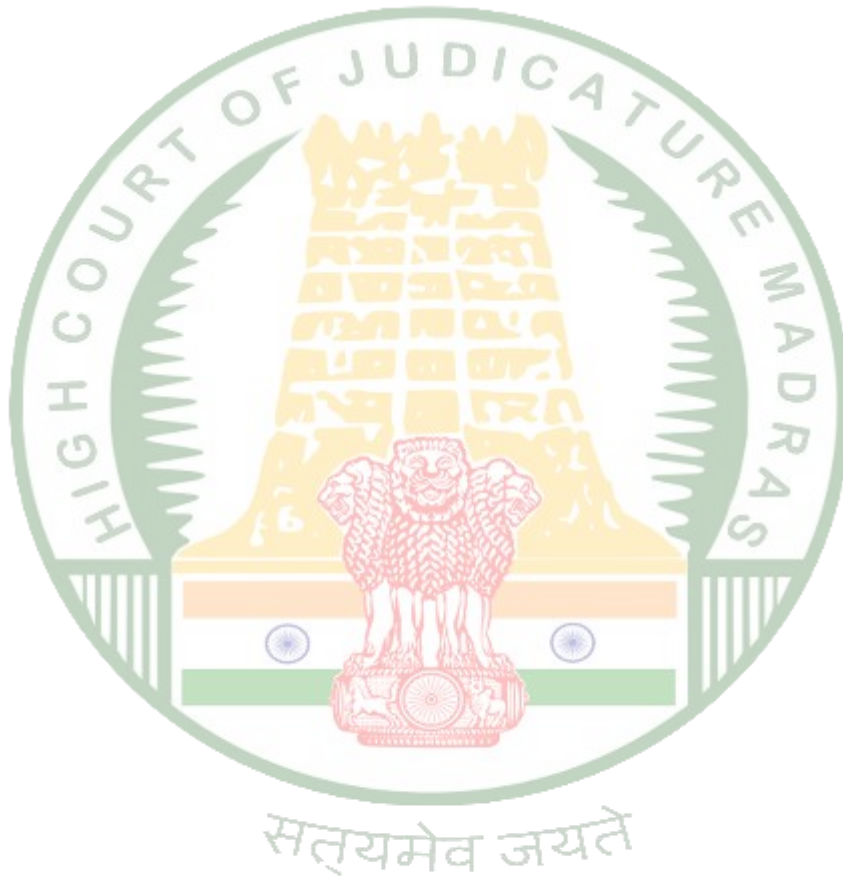
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Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

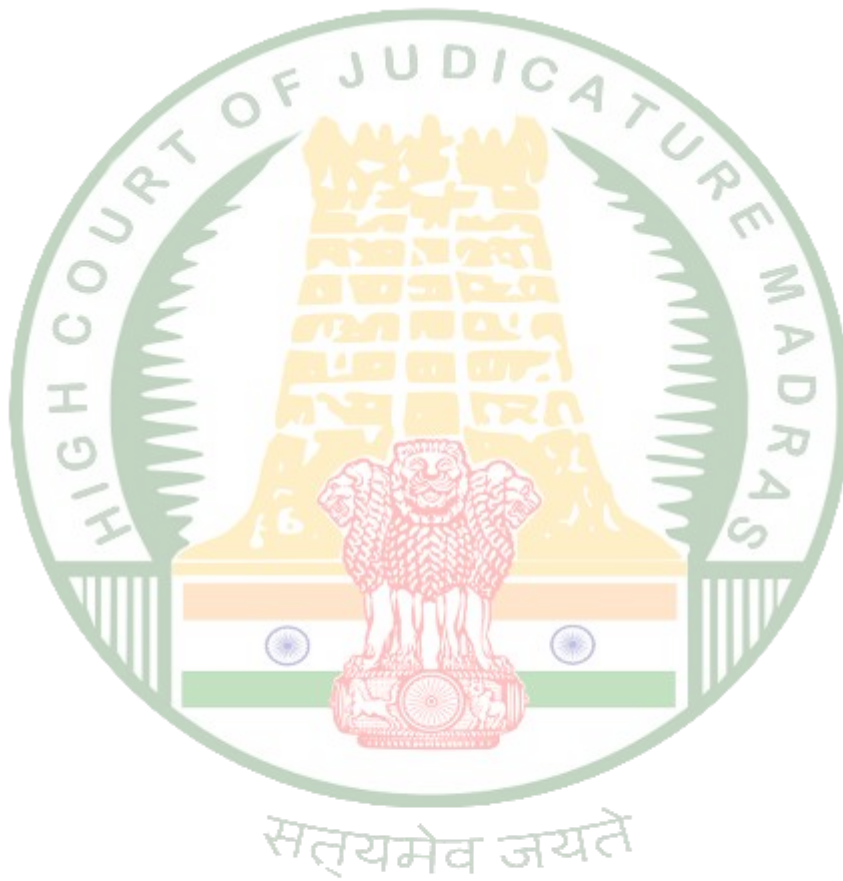
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To

The Principal District Munsif Court,
Poonamallee



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R.PONGIAPPAN, J

rts



order in
C.R.P.PD.No.2819 of 2014
and M.P.No.1 of 2014

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