

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(PD) No.3594 of 2014 &
M.P.No.1 of 2014

1.Rajendran
2.Karunanidhi
3.Selvaraj

... Petitioners

Vs.

1.Ramasamy
2.Kanagavalli

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order of the District Munsif Court, Nagapattinam, dated 7.8.2014 made in I.A.No.397/2014 in OS 240/2013.

For Petitioners Mr.S.Sounthar

For Respondents ... No appearance

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The instant civil revision petition has been filed challenging the order dated 07.08.2014 passed by the learned District Munsif Court, Nagapattinam in I.A.No.397 of 2014 in O.S.No.240 of 2013.

Brief facts leading to the filing of the instant revision under Article 227 of the Constitution of India:

2. The petitioners are the defendants in the suit O.S.No.240 of 2013 filed by the respondents on the file of the learned District Munsif Court, Nagapattinam. The suit was filed in respect of two schedules of property viz., A schedule property and B schedule property. The suit was filed for permanent injunction restraining the petitioners from interfering with the peaceful possession and enjoyment of the property by the respondents in respect of suit A schedule property and insofar as the suit B schedule property is concerned, the respondent has filed the suit for recovery of possession from the petitioners. During pendency of the suit, the respondents filed I.A.No.397 of 2014 under order XXVI Rule 9 CPC for appointment of an Advocate Commissioner for the purpose of finding out whether any encroachments are there in the suit A schedule as well as in the suit B schedule property. According to the respondents, as seen from the affidavit filed in support of I.A.No.397 of 2014, there are encroachments in the suit B schedule property and the petitioners are also attempting to encroach upon the suit A schedule property also.

3. A counter affidavit has also been filed by the petitioners in I.A.No.397 of 2014 denying the allegations contained in the affidavit filed in support of I.A.No.397 of 2014. In the counter affidavit, the petitioners have stated that an advocate commissioner cannot be appointed to collect evidence and also to establish who is in physical possession of the suit schedule properties. By order dated 07.08.2014, the Trial Court allowed I.A.No.397 of 2014 and appointed an Advocate Commissioner to find out whether there is any encroachment in the suit A schedule and B schedule properties and granted the relief as sought for by the respondents in I.A.No.397 of 2014. Aggrieved by the order dated 07.08.2014 passed in I.A.No.397 of 2014, the instant civil revision petition has been filed by the defendants under Article 227 of the Constitution of India.

Submissions of the learned counsel:

4. Heard, Mr.S.Sounthar, learned counsel for the petitioners. Despite service of notice and their names having been printed in the cause list today, no one has entered appearance on their behalf.

5. According to the learned counsel for the petitioners, an Advocate Commissioner cannot be appointed to collect evidence. He drew the attention of this Court to the plaint averments in O.S.No.240 of 2013 wherein according to him, the respondents have categorically pleaded that they are in possession of the suit A schedule property and insofar as the suit B schedule property is concerned, the petitioners/defendants are in possession. This being the case, according to him, an Advocate Commissioner cannot be appointed in respect of the suit A schedule as well as the suit B schedule properties, as admittedly even according to the respondents, the petitioners are in possession of the suit B schedule property. According to him, it is for the respondents to establish by documentary and oral evidence that they are the absolute owner of the suit A and B schedule properties and an Advocate Commissioner cannot be appointed to collect evidence on behalf of the respondents/plaintiffs.

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Discussion:

6. This Court has perused and examined the impugned order. The Trial Court has allowed I.A.No.397 of 2014 on 07.08.2014 on the

ground that the suit filed by the respondents for injunction and recovery of possession and if an Advocate Commissioner is appointed to measure the suit properties and to find out whether there is encroachments or not, it will be useful for the Court to decide the issues in hand. The Trial Court has also considered the contention of the respondents that the suit is barred by res judicata and it is hit by Order II Rule 2 CPC. But however, the Trial Court has left out those issues open for adjudication after trial.

7. This Court is of the considered view that no prejudice will be caused to the petitioners, if an Advocate Commissioner is appointed. The Advocate Commissioner has been appointed only to find out if there are encroachments in the suit A schedule and B schedule properties. Since the petitioners have taken a categorical stated in their written statement that they are in possession of both the suit A schedule and B schedule properties, the reliefs granted in I.A.No.397 of 2014 will not cause prejudice to the interest of the petitioners.

8. Therefore, this Court does not find any infirmity in the order passed by the Trial Court. However, considering the long pendency of the suit, a direction will have to be given to the Trial Court to dispose of the suit within a time frame as fixed by this Court.

Conclusion:

9. In the result, the civil revision petition is dismissed and the Trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet: Yes/No

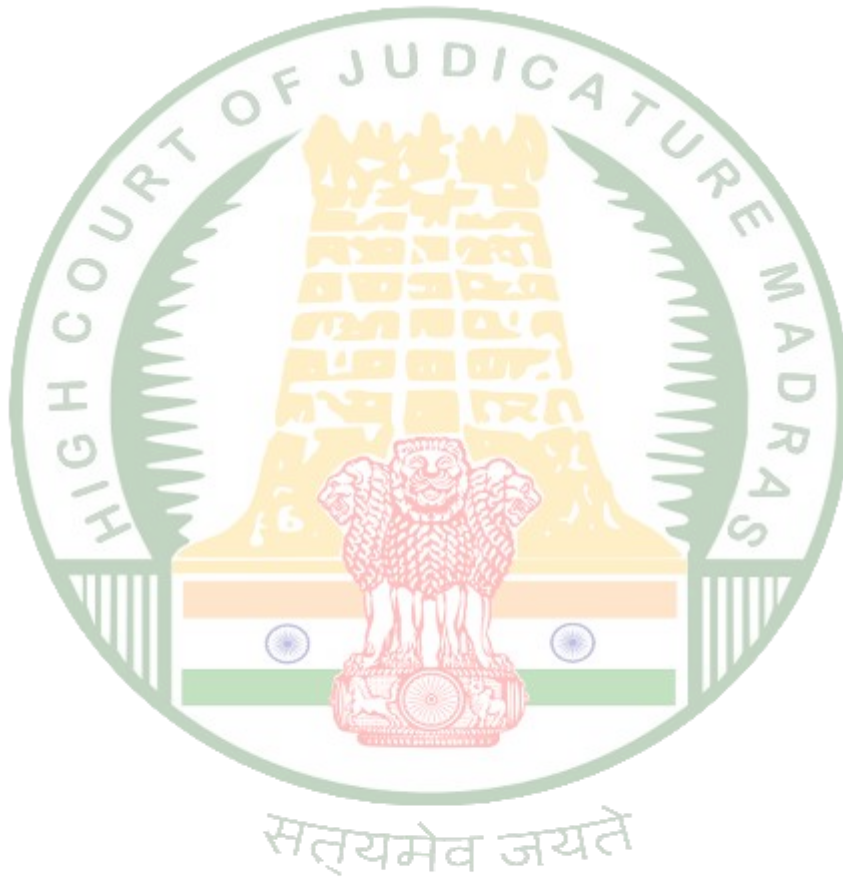
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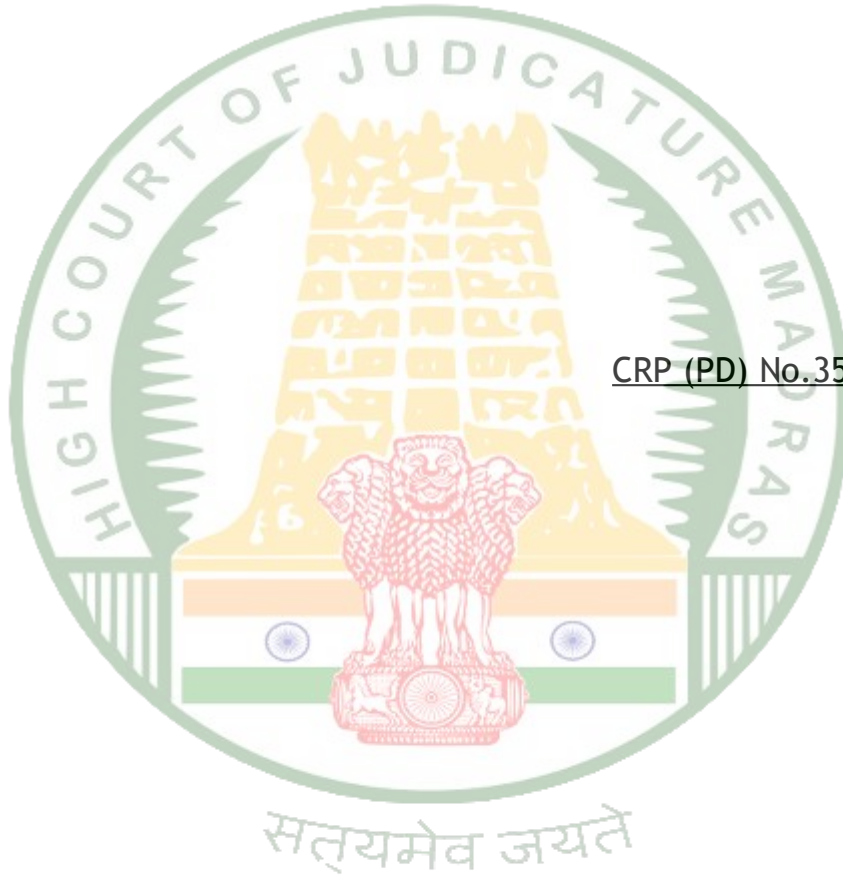
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ABDUL QUDDHOSE. J,

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CRP (PD) No.3594 of 2014

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