

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP(PD)No.3926 of 2014
and M.P.No.1 of 2014

Mannammal ... Petitioner

Vs

Pachimuthu ... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the order passed in I.A.No.221/2014 in O.S.No.303/2013 on the file of the learned Principal District Munsiff Judge, Thiruvannamalai dated 16.07.2014.

For Petitioner : Ms.R.Nasrine

For Respondent : served – no appearance

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 16.07.2014, passed by the learned Principal District Munsiff Judge, Thiruvannamalai in I.A.no.221 of 2014 in O.S.No.303 of 2013.

Brief facts leading to the filing of the instant revision:

2.The petitioner is the Plaintiff in the suit in O.S.No.303 of 2013, pending on the file of the learned Principal District Munsiff Judge, Thiruvannamalai. He filed a suit for declaration against the respondent to declare the alleged sale deed dated 07.11.2005 executed by Venkatesan in favour of the respondent as null and void apart from seeking the relief of permanent injunction in respect of the same property. During the pendency of the suit, I.A.No.221 of 2014 was filed by the petitioner under Order 26 Rule 9 CPC for appointment of an Advocate Commissioner to note down the physical features of the suit schedule property. A counter affidavit was also filed by the respondent in I.A.No.221 of 2014 denying the allegations contained therein.

3.By order dated 16.07.2014, the learned Principal District Munsiff Judge, Thiruvannamalai, dismissed I.A.No.221 of 2014 filed by the petitioner for appointment of an Advocate Commissioner.

4.Aggrieved by the said dismissal, the instant Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India.

5.Heard Ms.R.Nasrine, learned counsel for the petitioner. Despite service of notice on the respondent and his name having been printed in the cause list today, there is no appearance on his side.

6.This Court has perused the impugned order. The trial Court has dismissed the application on the ground that the petitioner is seeking to collect evidence and trying to prove her possession over the property by the appointment of an Advocate Commissioner. The relief sought for in the suit filed by the petitioner is for declaration that the alleged sale deed executed in favour of the respondent is null and void and she has also sought for injunction restraining the respondent from interfering with her peaceful possession and enjoyment of the suit schedule property.

7.As seen from the plaint averments, the petitioner claims that she is in possession of the suit schedule property. I.A.No.221 of 2014 has been filed under Order 26 Rule 9 CPC by the petitioner for appointment of an Advocate Commissioner only to note down the physical features of the suit schedule property.

8.This being the case, the trial Court under the impugned order has been under the wrong impression that the petitioner is seeking to collect evidence and trying to prove her possession over the property by filing the application for appointment of an Advocate Commissioner. As seen from the prayer sought for in I.A.No.221 of 2014, the petitioner has sought for appointment of an Advocate Commissioner only to note down the physical features of the suit schedule property. The relief even if granted in favour of the petitioner, will not prejudice the rights of the respondent as the Advocate Commissioner will only note down the physical features of the suit schedule property.

9.It is also the case of the petitioner that the building which is possessed by her, is in a dilapidated condition and in addition, the respondent is strongly objecting and preventing the petitioner from renovating the building. In light of these factors, it has necessitated for the petitioner to seek appointment of an Advocate Commissioner to note down the physical features of the suit schedule property. The trial Court ought to have considered all these aspects. However, as seen from the impugned order, the trial Court has dismissed the application only on the ground that the petitioner is attempting to collect evidence and trying to prove her possession over the property.

10.The reasoning given by the trial Court is baseless as it is the categorical stand of the petitioner, as seen from the plaint filed in O.S.No.303 of 2013 that she is in possession and enjoyment of the suit schedule property and that the respondent/defendant is interfering with her peaceful possession and enjoyment of the suit schedule property. Noting down the physical features of the suit schedule property will not prejudice both the parties to the suit. Therefore, the trial Court ought to have allowed the application I.A.No.221 of 2014 instead of dismissing the same.

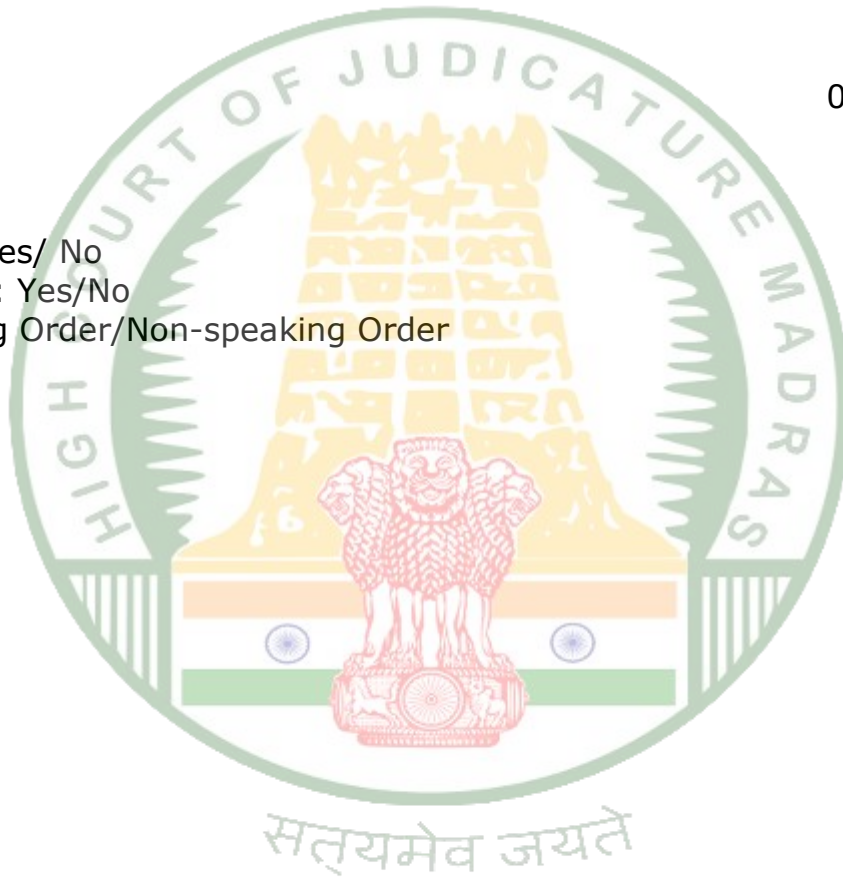
11.For the foregoing reasons, the impugned order dated 16.07.2014, passed by the learned Principal District Munsiff Judge, Thiruvannamalai, in I.A.No.221 of 2014 in O.S.No.303 of 2013 is hereby set aside and the trial Court is directed to appoint an Advocate Commissioner. The petitioner is directed to file a memo before the trial Court, within one week from the date of receipt of a copy of this order, informing the trial Court about the order passed by this Court and on receipt of the same, the trial Court shall appoint an Advocate Commissioner to note down the physical features of the suit schedule property and submit a report to the trial Court.

12.With the aforesaid directions, the instant Civil Revision Petition shall stand allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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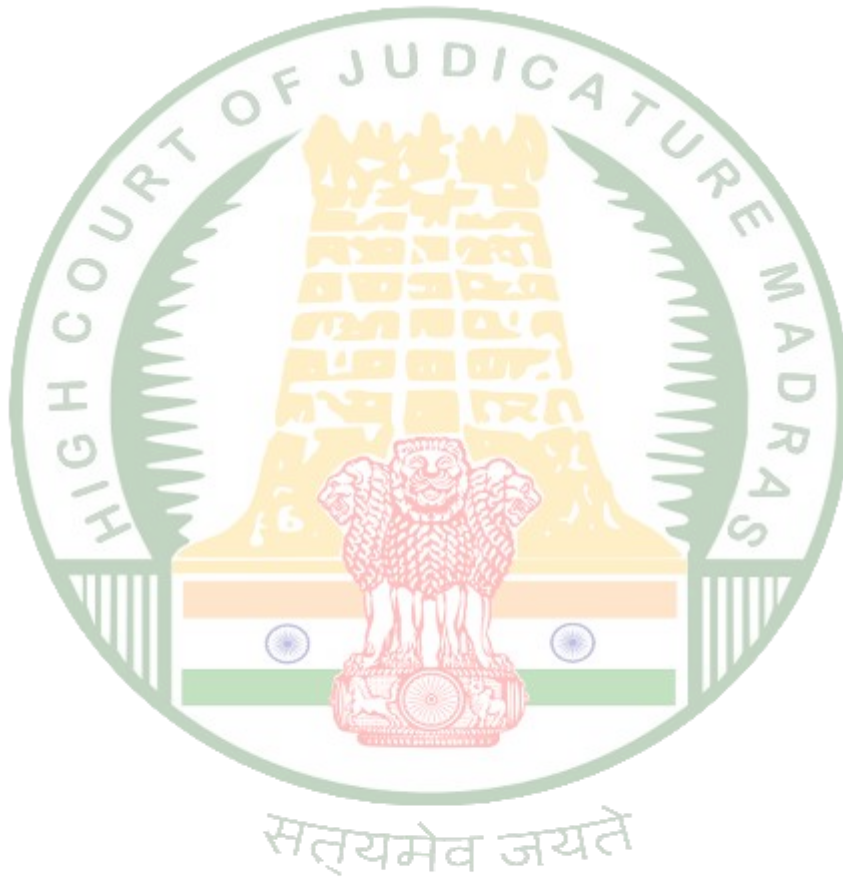
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Internet: Yes/No
Speaking Order/Non-speaking Order



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To

The Principal District Munsiff Judge, Thiruvannamalai.



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ABDUL QUDDHOSE, J.

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