

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2019

CORAM :

THE HON'BLE Ms. JUSTICE P.T.ASHA

C.R.P. (PD) No.21 of 2017

and

C.M.P. No.119 of 2017

S.Muthusamy

... Revision Petitioner

Vs.

1.K.Sundaramorthy

2.M.Duraisamy

3.R.Rangasamy

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 03.03.2016 in I.A.No.105 of 2016 in O.S.No.58 of 2016 on the file of the Additional Sub Court at Tiruppur.

For Petitioner : Mr.K.Myilsamy

For Respondents : Mr.K.S.Karthick Raja

ORDER

The above Civil Revision Petition has been filed, challenging the order, passed by the learned Additional Subordinate Judge, Tiruppur, in allowing the application filed by the defendants in I.A.No.105 of 2016 in O.S.No.58 of

2016, for appointment of an Advocate Commissioner in the suit for bare injunction for finding out the possession.

2.From a perusal of the papers, it is seen that the defendants have not filed their written statement till date and even without placing the defence on file, the application has been moved for appointment of an Advocate Commissioner and the same is also allowed by the learned Subordinate Judge.

3.The learned Judge has totally overlooked the facts that,

(a) it has been established under the provisions of law that an Advocate Commissioner cannot be appointed in a suit for bare injunction and it is for the parties to prove their case;

(b) when the defence is not in file, the fact that the application has been moved before filing of the written statement would only presuppose that the defendants are attempting to obtain their defence through the report of the Advocate Commissioner.

4.Therefore, the order of the learned Additional Subordinate Judge, Tiruppur, suffers not only from perversity, but also suffers from non-application of mind, which is liable to be set aside and accordingly, set aside.

5.It is open to the defendants to move any application as permitted by law. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.03.2019

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Index : Yes / No

Internet : Yes / No

Speaking order / Nonspeaking order

To

The Additional Subordinate Judge,
Tiruppur.



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P.T.ASHA, J.

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