

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.12.2019

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRP.(PD).No.3985 of 2019

and

C.M.P.No.26240 of 2019

R. Sethunathan

... Petitioner

Versus

1. Thulasidoss

Amsaveni (died)

2. Indira Sivagamasundari

3. SanthiVivekanandi

4. Sambathkumar

5. Gopinath

6. Gomathi

... Respondents

PRAYER: Civil Revision Petition filed under Section 227 of the Constitution of India against the fair and decretal order dated 03.09.2019 made in I.A.No.37 of 2019 in O.S.No.8 of 2015 on the file of the II Additional District Judge at Tindivanam.

For petitioner : Mr. N.Mala

For respondents : Mr. R. Veeramani

ORDER

With the consent of both the parties, the Civil Revision Petition is taken up for final disposal at the Admission stage itself.

2. This Civil Revision Petition has been filed against the order of dismissing the application for appointment of Advocate Commissioner to measure the suit property. The petitioner/plaintiff, filed a suit in O.S.No.8 of 2015 on the file of the II Additional District Judge, Tindivanam, for specific performance to execute a sale deed based on the sale agreement said to have been executed by the respondents herein. After commencement of trial, the said application has been filed on the ground that as per the agreement, the respondents/defendants ought to have measured the properties and fix the boundaries, then only the actual measurement of the property can be find out and the petitioner can able to establish his case. The trial Court dismissed the application by an order dated 03.09.2019. Now, challenging the same the present revision has been filed.

3. Heard the learned counsel for the petitioner and the respondent and perused the materials available on records.

4. The suit was filed for specific performance to execute a sale deed. When the suit was posted for trial, the application for appointment of an Advocate Commissioner has been filed by the petitioner. The main reason seeking for appointment of Commissioner is that, as per the agreement, the defendant has to execute the sale deed after measuring the property, unless the property is measured and specific boundaries are fixed, the respondents will not be able to execute the sale deed in favour of the petitioner. In my considered opinion, there is no necessity, at this stage, to measure the property, when the suit is pending. If the petitioner succeeds in the suit, then at the time of execution of sale deed, it is always open to him to measure the property and pay the balance sale consideration as per the sale agreement. Now, At this stage, there is no necessity for appoint an Advocate Commissioner to measure the property. The trial Court, after considering the same, rightly dismissed the said application. I find no irregularity or illegality in the order passed by the Trial Court and I find no merit in the Revision Petition.

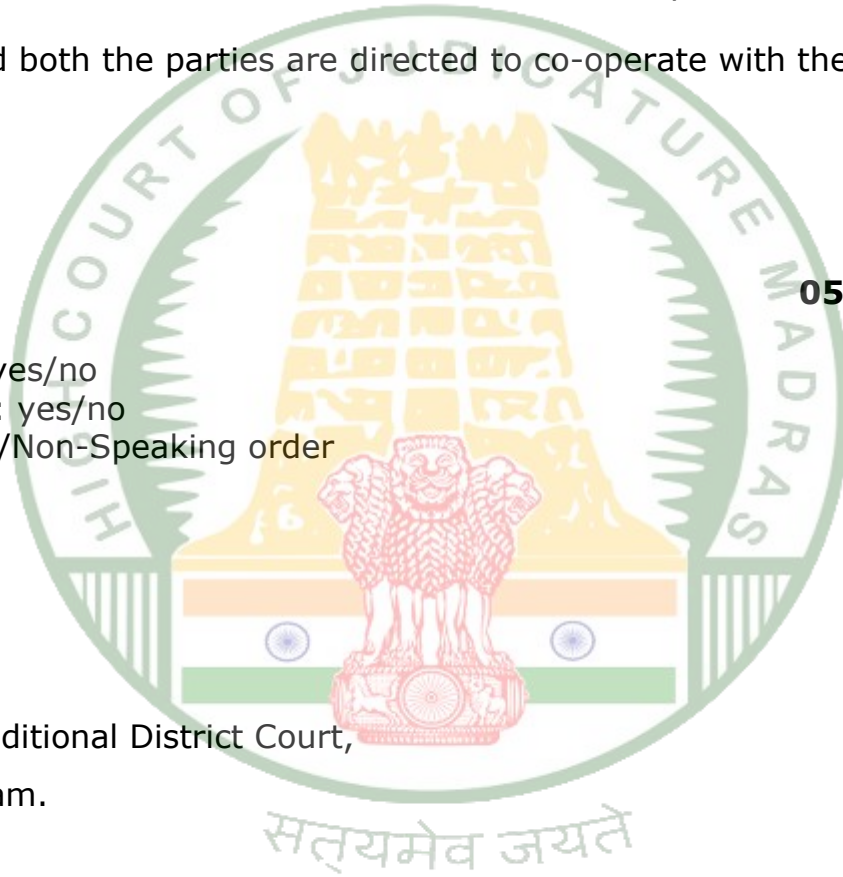
5. Accordingly, the this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. However, considering the fact that now trial has commenced, the Trial Court is directed to proceed with the trial and dispose the same within a period of three months from the date of receipt of a copy of this order and both the parties are directed to co-operate with the trial.

05.12.2019

Index : yes/no
Internet : yes/no
Speaking/Non-Speaking order

mrp

To
The II Additional District Court,
Tindivanam.



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CRP.(PD).No.3985 of 2019

V.BHARATHIDASAN

mrp



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