

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2019

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(PD) No.4149 of 2018

C.M.P.No.22881 of 2018

S.Rajalingam

... Petitioner

Vs.

M/s.Kannika Parameshwari Amman Mutt @
Chattiram, Kadai Veedhi,
Namakkal Town and District
rep by Babu @ Venakatasubbu

... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 17.09.2018 made in Civil Miscellaneous Appeal No.7 of 2017 on the file of Subordinate Judge, Namakkal confirming the fair and decreetal dated 28.02.2017 made in I.A.No.1453/2016 in O.S.No.409/2016 District Munsif Court, Namakkal.

For Petitioner : Mr.Muhund
for M/s.Sarvabhauman Associates
For Respondent : Mr.C.Jagadish for M/s.S.Senthil.

ORDER

This civil revision petition has been filed against the order of the First Appellate Court confirming the order passed by the Trial Court dismissing the application filed to seeking permission to put up temporary structures to safeguard the stocks of the plaintiff.

2. The suit itself is filed for an injunction of restraining the defendant not to dispose the possession of the plaintiff and also directing the mandatory injunction to put up the compound walls. When the suit was pending, an application has been taken out by the plaintiff, seeking permission to put up the zinc sheet. However, the trial court has dismissed the application on the ground that the previous suit filed by the parties is the same subject matter which is pending before the Madras High Court in second appeal. The First Appellate Court has confirmed the judgment of the trial court, as against which, the present civil revision petition is filed.

3. Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondent.

4. This Court find that there is no dispute with regard to the previous suit filed by the revision petitioner. The suit is now pending in second appeal before this Court, whereas, it appears that the previous proceedings itself held that the revision petitioner is not a tenant of the suit properties. When the above second appeal is pending, the present suit has been filed for permanent injunction claiming that he is a tenant in the property and also for mandatory injunction to put up the compound wall. The Trial Court and the First Appellate Court has analysed the entire facts and took note of the previous suit pending in the second appeal stage. The Courts below found that at this stage, the permission cannot be granted.

5. In view of the above, I do not find any error or illegality in the order passed by the trial Court when the rights of the parties is under dispute, now, we cannot go into the issue of amenities. Hence, I do not find any error or irregularity passed by the trial Court and accordingly, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

6. The trial court is directed to dispose of the suit within a period of six(6) months from the date of receipt of copy of this order.

N. SATHISH KUMAR, J.

msv

The parties are directed to establish their rival contentions before the trial Court.

19.03.2019

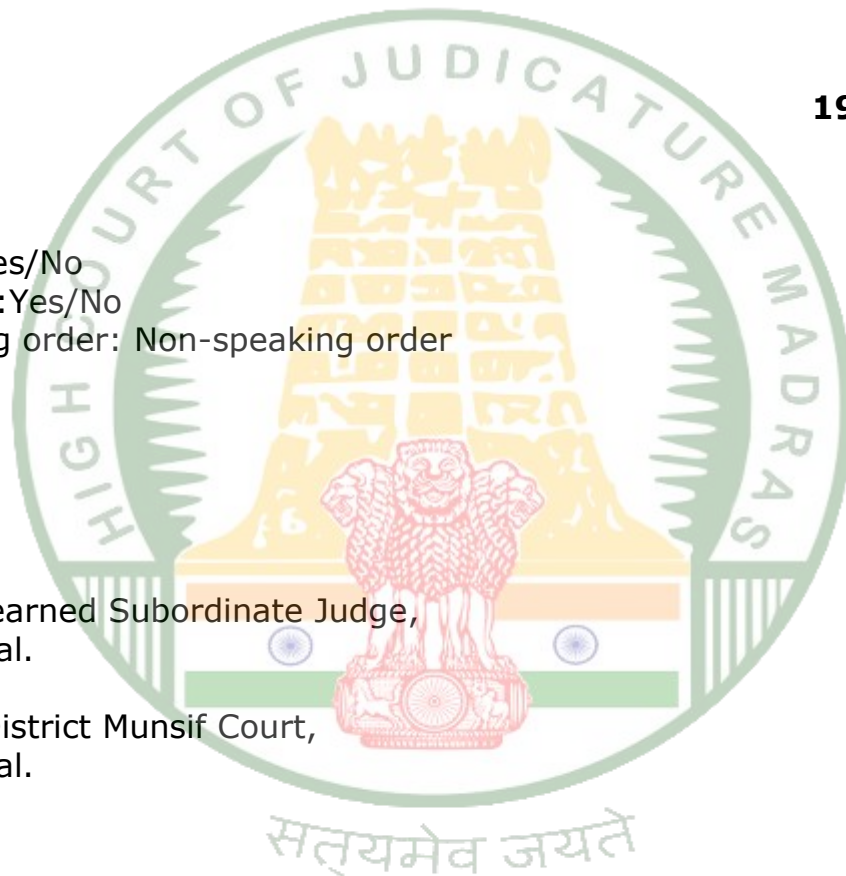
msv

Index:Yes/No
Internet:Yes/No
Speaking order: Non-speaking order

To

1. The learned Subordinate Judge,
Namakkal.

2. The District Munsif Court,
Namakkal.



WEB COPY

C.R.P.(PD) No.4149 of 2018
C.M.P.No.22881 of 2018