

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2892 of 2018 and
CMP No.16953 of 2018

1. M.Vijayarajan
2. H.M.Maheswari ... Petitioners

Vs

S.Shakila Banu ... Respondent

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 20.06.2018 in I.A.No.730 of 2018 in O.S.No.07 of 2018 on the file of the Additional District Judge, Fast Track Court No.IV, Bhavani, Erode District.

For Petitioners : Mr.Dhanasekaran, for
Mr.R.Thamaraiselvan

For Respondent : Mr.SP.Yuvaraj

ORDER

This revision is directed against an order, rejecting the application for appointment of an Advocate Commissioner to inspect the

suit property to note down the physical features and file a report.

2. The suit is one for declaration that the Sale deed executed by the plaintiffs in favour of the defendant on 08.01.2018 is sham and nominal, for a mandatory injunction directing the defendants to hand over the original sale deed of the plaintiffs, dated 12.03.2012 and for a permanent injunction restraining the defendant, her men and agents from disturbing the plaintiffs peaceful possession and enjoyment of the suit property.

3. The suit is being resisted by the defendant contending that the Sale deed is genuine and she was also put in possession of the property, upon execution of the Sale Deed. During the pendency of the said suit, the plaintiffs came out with an application seeking appointment of an Advocate Commissioner. This was resisted by the respondent / defendant contending that the very scope of the suit does not admit an application for appointment of an Advocate Commissioner. When the suit itself for a declaration regarding the validity of the Sale Deed no Commissioner could be appointed to note down the physical features which are wholly irrelevant.

4. The learned trial Judge agreed with the defence and dismissed the application. Aggrieved the plaintiffs have come with this Civil Revision petition.

5. I have heard Mr.Dhanasekaran, for Mr.R.Thamaraiselvan learned counsel appearing for the petitioners and Mr.SP.Yuvaraj, learned counsel appearing for the respondent.

6. The trial Court had held that considering the nature of the suit namely for cancellation of the Sale Deed and for a mandatory injunction for handing over the original Sale deed, the appointment of an Advocate Commissioner is wholly unnecessary. The trial Court also found that the Advocate Commissioner cannot be appointed to find out who is in possession of the property. The trial Court faulted the plaintiffs for fishing for evidence in seeking for appointment of an Advocate Commissioner. I do not see any illegality or irregularity in the reasons assigned by the trial Court for dismissing the application,

7. Considering the nature of the suit, the prayer for appointment of an Advocate Commissioner is wholly outside the scope of the very suit. Hence, the Civil Revision fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23.11.2020

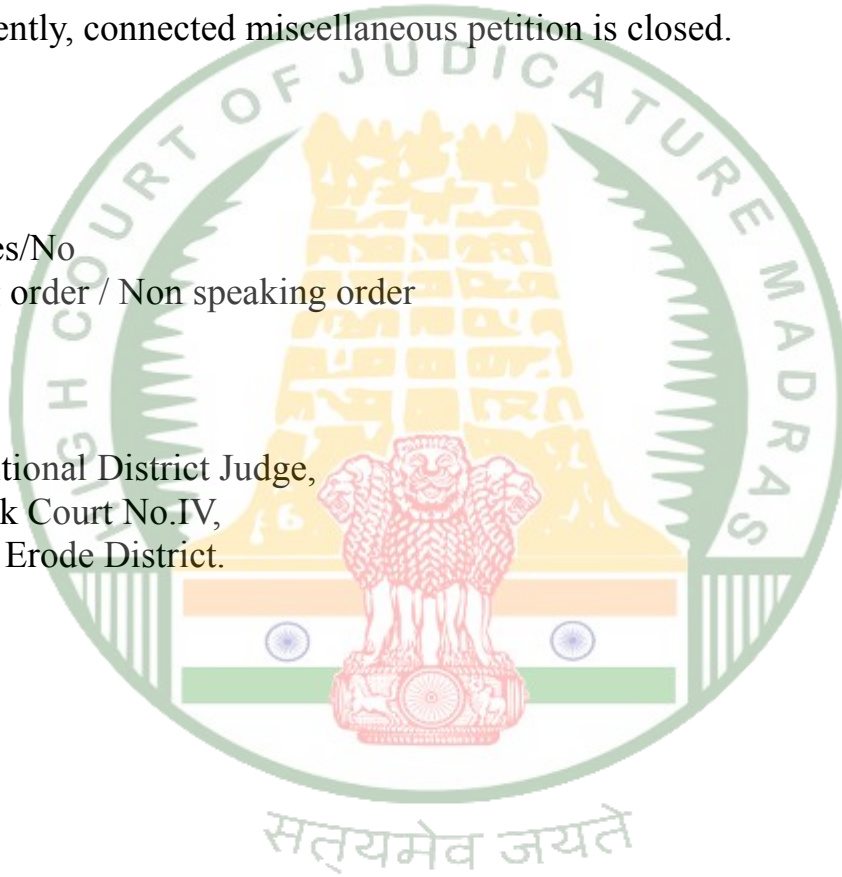
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Index: Yes/No

Speaking order / Non speaking order

To

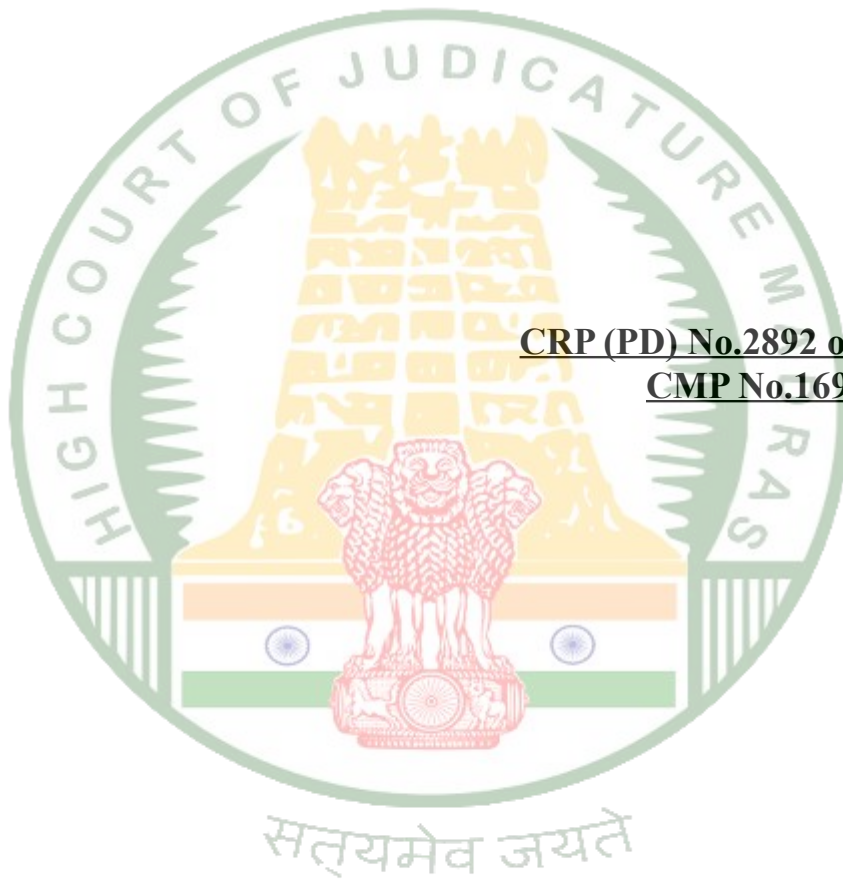
The Additional District Judge,
Fast Track Court No.IV,
Bhavani, Erode District.



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R.SUBRAMANIAN, J.

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