

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP(PD).No.2204 of 2020
and
CMP.No.13898 of 2020

K.Balakrishnan ... Petitioner/Defendant
Versus

Kala ... Respondent/Plaintiff

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, 1950 to set aside the order of the learned Additional District Munsif Court, Ulundurpet, made in I.A.SR.No.2300 of 2020, dated 05.11.2020 and direct the Court below to take on file and decide the same on merits.

For Petitioner : Mr.S.Ayyathuraj

ORDER

This Civil Revision Petition has been filed to set aside the order of the learned Additional District Munsif Court, Ulundurpet made in I.A.SR.No.2300 of 2020, dated 05.11.2020.

2.The defendant in the suit in O.S.No.52 of 2017 is the revision petitioner herein.

3.The respondent herein/plaintiff has filed a suit in O.S.No.52 of 2017, on the file of the learned Additional District

Munsif Court, Ulundurpet, Kallakurichi District, for declaration of title deeds and for permanent injunction. The revision petitioner/defendant had filed written statement in the said suit by alleging that the plaintiff had encroached upon the property belong to him and during the pendency of the suit, the revision petitioner/defendant had filed an application in I.A.SR.No.2300 of 2017, before the learned Additional District Munsif Court, Ulundurpet, for appointment of Advocate Commissioner under Order XXVI Rule 9 of CPC. In the said application, he had used the sentence **"the defendant enjoying the property and to the factum of defendants possession"** (translated in English) and hence, the learned Additional District Munsif, Ulundurpet, held that the defendant cannot seek for the prayer to note down the possession of the defendant in the suit property and accordingly, rejected the application at the SR stage. As aggrieved against the said order, the defendant has preferred this petition.

4. Heard the learned counsel appearing for the petitioner.

5. In view of the sentence viz., **"The defendant is in possession and to note down, the defendant possession in the suit property"**, the reasoning observed by the learned

Additional District Munsif, is correct in holding so and rightly rejected.

6.However, Mr.S.Ayyathuraj, learned counsel for the petitioner would draw my attention that the dispute between the party is with regard to who is in possession to what extent and hence, appointment of Advocate Commissioner is necessary and there was some error in drafting petition and hence, he seeks liberty.

7.Taking into consideration of the facts and circumstances of the case, liberty is given the petitioner to move application for appoint of Advocate Commissioner.

8.With the above liberty, this Civil Revision Petition is closed. No costs. Consequently, connected miscellaneous petition is closed.

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Speaking Order:Yes/No

Note:Issue order copy on 23.12.2020

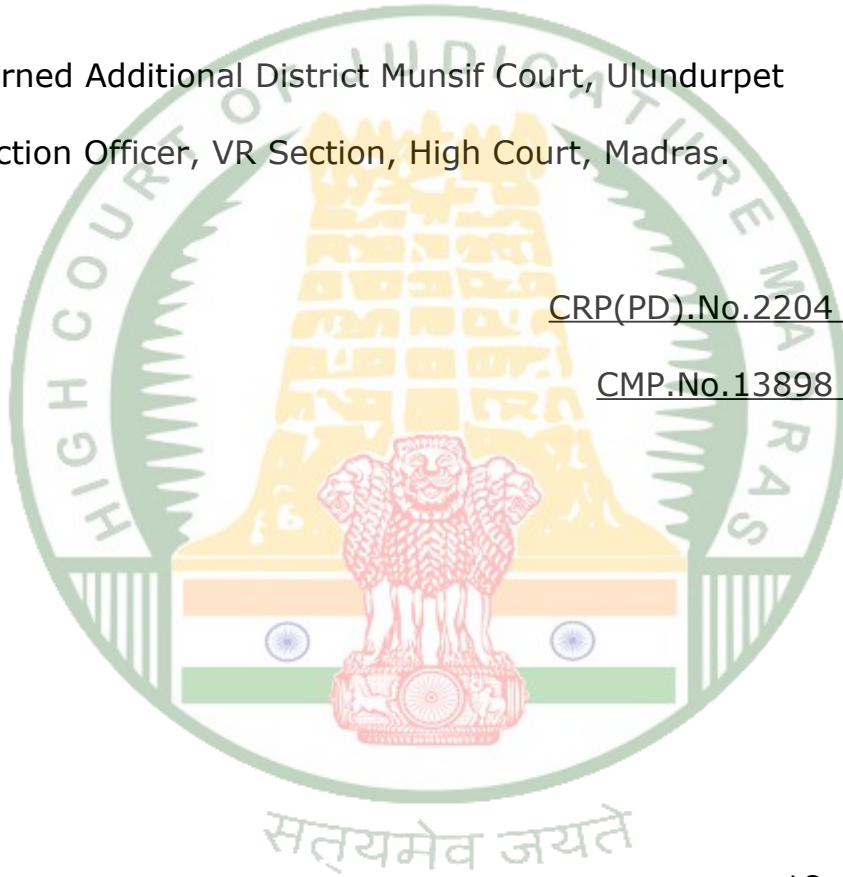
RMT.TEEKAA RAMAN., J.

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To

- 1.The learned Additional District Munsif Court, Ulundurpet
- 2.The Section Officer, VR Section, High Court, Madras.



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