

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 21.08.2020

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

O.A. No.9314 of 2019

M/s Cholamandalam Investment and Finance Company
Limited, ' Dare House' No.2, NSC Bose Road,
Parrys, Chennai-1. rep. by its Manager Legal,
Mr.R.Sivakumar ... Applicant

Vs.

Devshi Shukabhai Odedara,
Lord Krishna park 2 Rail Nagar,'Near Bakala market,
Rajkot, 360 002. ... Respondent

Prayer: Application filed under Order XIV Rule 8 of O.S.Rules read with Section 9(ii)(b) and (e) of the Arbitration and Conciliation Act, 1996 and Section 136 of the Code of Civil Procedure to appoint Advocate Commissioner to take physical possession of the property situated at constructed residential property admeasuring 32.54 sq.mts situated at City Survey Ward No.8/1, City Survey No.157 p Vishakha Bhavan P flat No.301, 3rd floor, Milpara Main Road, Opposite Bol Pala Trust, Rajkot 360 001, Gujarat, bounded on North : others property, south: flat No.302, East: Milpara Main road, West: others property within the Sub Registration District of Rajkot-I, (city) and more fully described in the schedule to the judges summons and permit the advocate commissioner to appoint police aid and break open the premises of the said property.

For Applicant : Mr. V.Balasubramani P. Veeramali

Order

This application has been filed to appoint an Advocate Commissioner to take possession of the property more fully described in the judges summons.

2. The learned counsel appearing for the applicant submitted that the mortgagor has allowed the third party into the possession of the property and therefore, appointment of advocate commissioner is necessary to take possession of the property.

3. Once the property is mortgaged, the interest of the applicant company is secured and hence Advocate Commissioner cannot be appointed to dispossess the third party. If at all any right accrued to the applicant company, it is for them to enforce the mortgage deed executed by the borrower/respondent, as per law. Therefore, this court is not inclined to pass any order in this application.

4. With the above observation, this application is dismissed.

No costs.

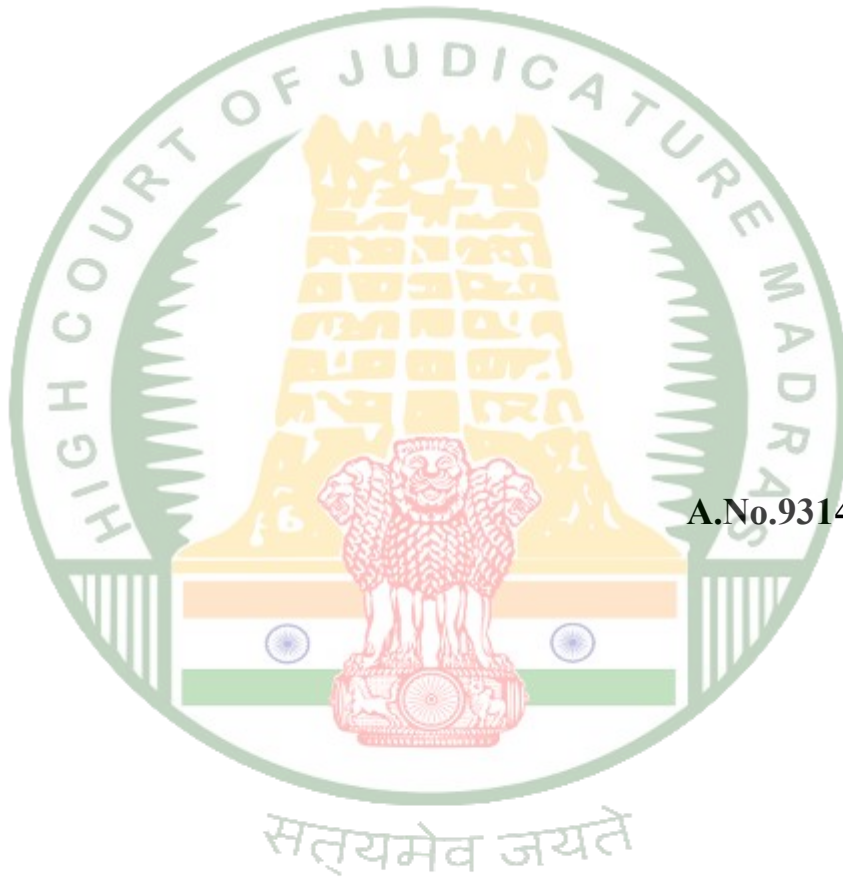
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N.SATHISHKUMAR, J.

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