

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.06.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD).No.1439 of 2017

and

C.M.P.No.6691 of 2017

P.Rajeswari

.... Petitioner

- Vs -

1. Saroja

2. Dhanalakshmi

3. Seeniammal

4. Venkatesan

5. Kumutha

6. Executive Officer,
Arulmigu Kayarogana Swami
Vudanurai Neelayathatchi Amman Temple,
Nagapattinam District. ... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India against the Order in un-numbered E.A. of 2017 in E.P.No.111 of 2014 in O.S.No.57/2012 dated 13.03.2017 on the file of the District Munsif Court, Nagapattinam.

For Petitioner : Mr.M.Purushothaman
For 1st Respondent : Mr.S.Giritharan
For Respondents 2 to 6 : No Appearance

ORDER

According to the petitioner, the subject matter of the scheduled property belongs to HR & CE Department, viz., 6th respondent. The 6th respondent has served notice to the petitioner under Section 78(2) of the HR & CE Act. The said communication would show that the petitioner is in possession of the said property. The respondents 1 to 4 herein have filed the suit in O.S.No.57/2012 against the 5th respondent and obtained exparte decree. The respondents 1 to 4 / plaintiffs filed E.P.No.111/2014 in O.S.No.57/2012 to execute the decree. E.P. was ordered in favour the respondents 1 to 4 / plaintiff. Aggrieved by the same, the petitioner has filed E.A.(unnumbered before the Executing Court under Order XXI Rule 97 r/w. Section 151 CPC and the same was returned. Challenging the said order, dated 13.03.2017 passed by the Executing Court, the petitioner has preferred the present Civil Revision Petition.

2. According to the learned counsel for the petitioner, the court below has passed the order, rejecting the claim of the petitioner at the threshold, even at the numbering stage and returned the same, without considering the decision of the Hon'ble Supreme Court and this Court relied upon by the petitioner and therefore, the petitioner has filed the present revision seeking

to set aside the order of the court below.

3. The said suit is a collusion suit between the respondents 1 to 4 and 5. Therefore, the said application under Order XXI Rule 97 of C.P.C., is maintainable. Hence, the petitioner prays this Court to set aside the order of the Court below.

4. According to the learned counsel for the 1st respondent, the respondents 1 to 4 herein have filed the suit against the 5th respondent and obtained exparte decree. Now, Execution Petition has been filed before the court below. At this stage, the present application is filed. Therefore, the court below has rightly returned the said application.

5. Perusal of the order passed by the court below would show that without numbering the application filed under Order XXI Rule 97 of C.P.C., order has been passed by the court below. The petitioner being obstructor of the property, the court below ought to have number the application, if it is in order and to pass orders, after providing opportunities to the parties concerned. Without adjudicating the case, the court below has erroneously rejected the said application even at the un-numbered stage. Therefore, the order of the court below is erroneous and therefore, the order passed in the application in S.R.Nos.1421 of 2017 dated 06.03.2017 and 1468 of 2017 dated

07.03.2017 is liable to be set aside.

6. Accordingly, this Civil Revision Petition is allowed and the order passed by the court below in un-numbered E.A. of 2017 in E.P.No.111 of 2014 in O.S.No.57/2012 dated 13.03.2017 on the file of the District Munsif Court, Nagapattinam is set aside. The petitioner has to comply with the defects pointed out by the court below and re-present the E.A.papers. The learned District Munsif, Nagapattinam is directed to number the application, if it is in order and to pass orders in the above application under the provisions of law, after providing opportunities to the parties concerned. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

7. The Registry is directed to return the original impugned application to the learned counsel for the petitioner, after obtaining certified copy of the same.

23.06.2017

Speaking Order / Non-Speaking Order

Index:Yes / No

Internet:Yes / No

ssn

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To

1. The District Munsif Court,
Nagapattinam.

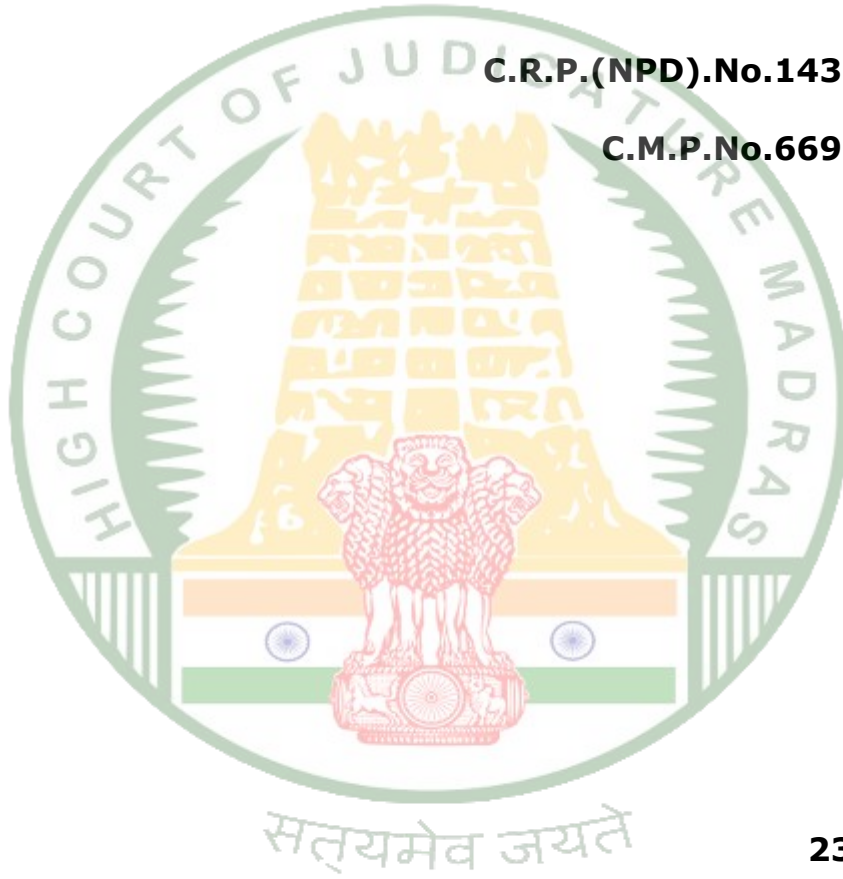
2. Executive Officer,
Arulmigu Kayarogana Swami
Vudanurai Neelayathatchi Amman Temple,
Nagapattinam District.



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D.KRISHNAKUMAR, J.,

ssn



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