

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP.(NPD) Nos. 254 and 255 of 2017
and
CMP.Nos. 1102 & 1103 of 2017

1. R. Gowri
2. R. Santhanam
3. R. Boopathy
- K. Alamelu (died)

... Petitioners
in both CRPs

Vs.

A. Ramachandran

... Respondent
in both CRPs

PRAYER in both CRPs: These Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the common order & decretal order dated 15.09.2016 passed in E.A. Nos. 11730 of 2010 and E.A. No.1064 of 2011 in E.P No.210 of 1990 in O.S. No. 1563 of 1983 passed by the X Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr. M. Arun
in both CRPs

For Respondent : Mr. M. Muthappan
in both CRPs

COMMON ORDER

The petitioners have filed these Civil Revision Petitions to set aside the common order dated 15.09.2016 passed in E.A. Nos. 11730 of 2010 and 1064 of 2011 in E.P No.210 of 1990 in O.S. No. 1563 of 1983 passed by the X Assistant Judge, City Civil Court, Chennai.

2. Learned counsel for the petitioners would submit that the respondent filed a suit in O.S. No.1563 of 1983 for mandatory and permanent injunction, but the same was dismissed. Against the same, the respondent filed an appeal in A.S. No.667 of 1988, which was decreed in favour of the respondent. Hence, execution proceedings were initiated in E.P No.210 of 1990. Against the same, the respondent filed E.A. No. 11730/2010 to remove the obstruction caused by the obstructors and the petitioners filed E.A. No. 1064/2011 to consider the obstruction of them and release the property. A common order was passed on 15.09.2016 by the X Assistant City Civil Court, Chennai allowing E.A.No. 11730/2010 and dismissing E.A. No. 1064/2011. Aggrieved by he said common order passed in both the Applications, the petitioners have filed these revisions.

3. According to the learned counsel for the petitioners, the Executing Court has not considered the issues involved in the application filed under Order 21 Rule 101 of CPC. The order passed in the Execution Petition cannot be treated as a decree. Therefore, the Civil Revision Petition is maintainable before this Court.

4. Learned counsel for the respondent would submit that the application filed under Order 21 Rule 101 of Civil Procedure Code was considered on merits and then the detail order has been passed. Therefore, the remedy for the petitioners is only to file an appeal before the Appellate Court. At this stage, learned counsel for the petitioners would submit that in the event of Civil Revision Petition is not maintainable, time may be given to the petitioners to file an appeal before the Appellate Court and in the meantime, interim orders granted by this Court may be extended till such period.

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5. As rightly pointed out by the learned counsel for the respondent, the present Civil Revision Petition is not maintainable before this Court, under Order 98 Rule 101 CPC. Therefore, the petitioners

have to work out their remedy by filing an appeal before the Appellate Court.

6. Hence, the Civil Revision Petitions are dismissed as not maintainable, with liberty to the petitioners to file an appeal, if so advised, within a period of three weeks from the date of receipt of a copy of this order. Till such period, the interim order already granted by this Court on 24.03.2017, is extended. At this stage, learned counsel for the respondent requested that in the event of filing an appeal, the Appellate Court may be directed to dispose of the said appeal, as expeditiously as possible.

7. In view of the above facts, if the petitioner files an appeal, the Appellate Court shall consider and dispose of the said appeal, as expeditiously as possible, taking into account the prolonged adjudication. Consequently, the connected M.Ps are closed. No order as to costs. Registry is directed to return the original fair and decretal orders, filed in this Revision Petition, after obtaining copy of the same.

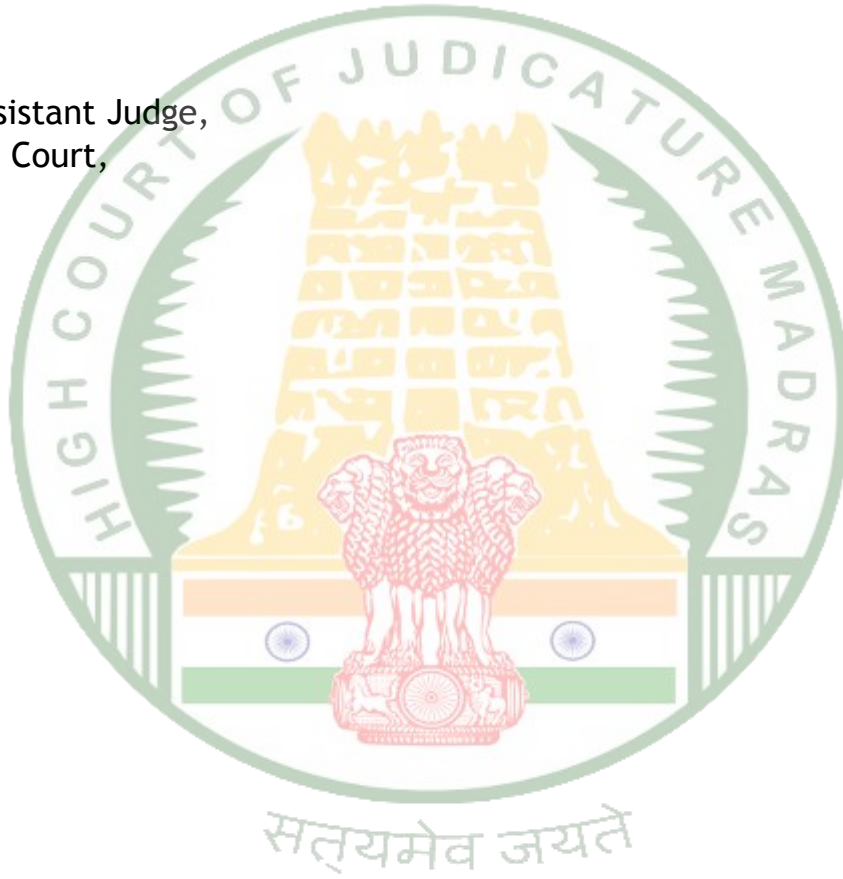
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Index: Yes/No

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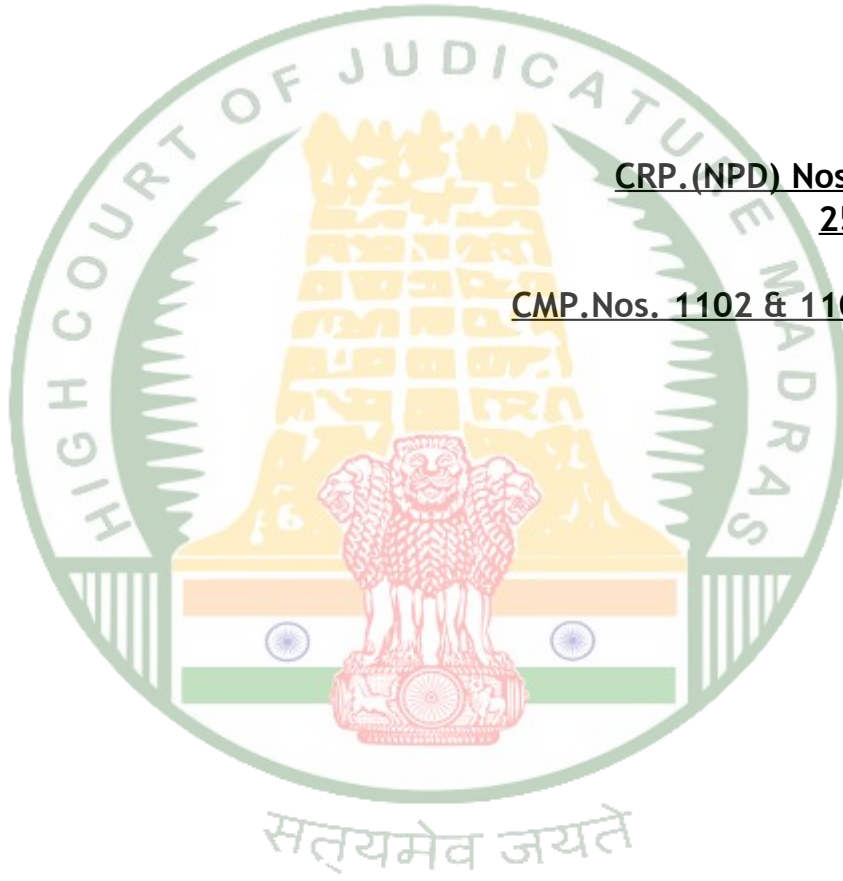
The X Assistant Judge,
City Civil Court,
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D. KRISHNAKUMAR J.

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