

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(PD) NO.2634 OF 2017

P.Sivasubramani

... Petitioner

Vs.

1.P.Shanmugam
2.M.Balamani
3.Selvaraj
4.S.Vaitheeswaran
5.S.Balaji

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India directing the learned District Munsif, Thiruppur, to entertain the suit filed by the petitioner in Unnumbered O.S.No..... of 2016 by numbering the same and proceed with the case.

For Petitioner : Mr.S.Prabhakaran
Senior Counsel for Mr.R.Nalliyappan

ORDER

This Civil Revision Petition is filed against returning of the
plaint in Unnumbered O.S.No.... of 2016, on the file of District Munsif,
Thiruppur.

2. From the docket entries, it could be seen that the Trial Court has returned the plaint, with the following endorsement:

"As per the plaint pleadings, it is seen that "O.S.No.78/2015 is pending before the Hon'ble Principal District Court pertaining to the suit property, how this suit is maintainable before this Court to be explained. Hence returned. Time one month."

3. The suit has been filed by the petitioner for a declaration to declare the cancellation of settlement deed dated 29.04.2013 as null and void and for injunction restraining the defendants from interfering with his peaceful possession and enjoyment. The petitioner's father has settled the suit property, by virtue of a registered settlement deed bearing No.1932 of 2012, dated 08.03.2012. The settlement is an irrevocable settlement and the possession was handed over to the petitioner / plaintiff on the same day. Respondent nos.3 to 5 have filed a suit for partition before the Principal District Court, Thiruppur, in O.S.No.78 of 2015, wherein, it was stated that the settlement deed dated 08.03.2012 was cancelled on 29.04.2013. In so far as the "B" Schedule

property in O.S.No.78 of 2015 is concerned, the petitioner / plaintiff claims absolute right through the irrevocable settlement deed.

4. It is the contention of the learned counsel for the petitioner that unless the cloud over the title, by virtue of the cancellation deed dated 29.04.2013 is cleared and the said property is proved as not liable for partition, the petitioner will be seriously prejudiced. But the learned District Munsif has returned the plaint without assigning any reason as to maintainability. It was simply stated therein that O.S.No.78 of 2015 is pending before the District Court, Thiruppur and hence, how the present suit is maintainable.

5. Admittedly, the suit in O.S.No.78 of 2015 is for partition, whereas one of the properties in the partition suit claimed to be the absolute property of the petitioner herein. While contending in the partition suit that the "B" schedule property in O.S.No.78 of 2015 is not liable for partition, the petitioner can also take independent steps to establish that he is the absolute title holder and the cancellation is illegal. The issue can be decided only by numbering the suit and therefore, the petitioner is entitled to the prayer sought for.

6. Accordingly, the Civil Revision Petition is allowed with a direction to the District Munsif, Tiruppur, to number the suit. No costs.

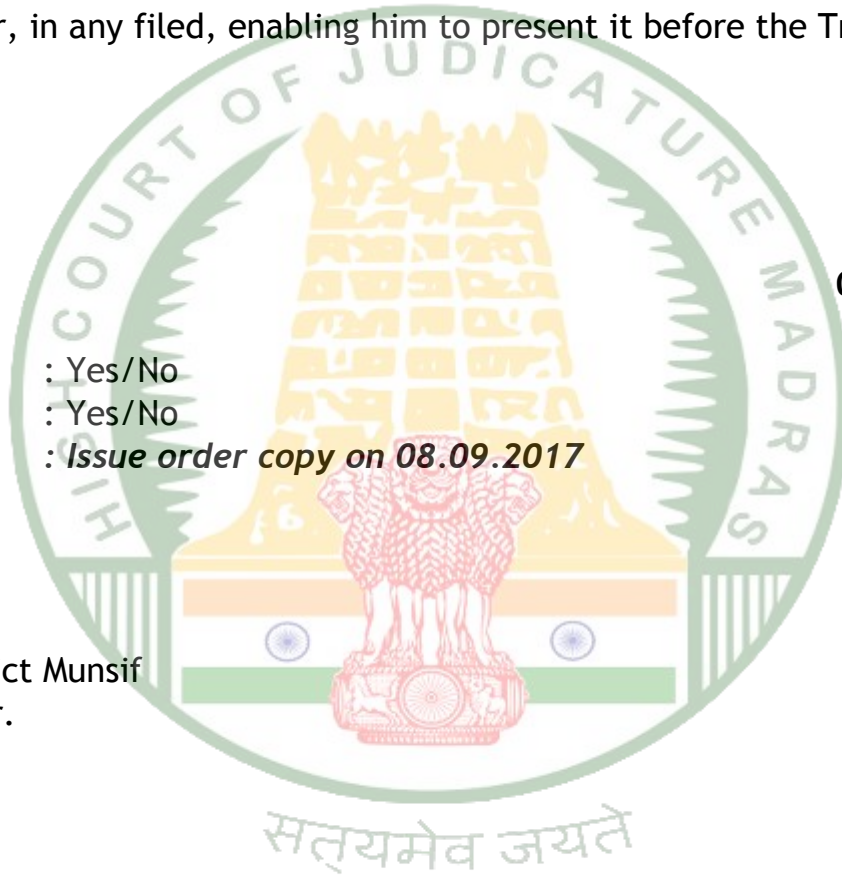
7. The Registry is directed to return the original plaint to the petitioner, in any filed, enabling him to present it before the Trial Court.

07.08.2017

Index : Yes/No
Internet : Yes/No
Note : ***Issue order copy on 08.09.2017***
TK

To

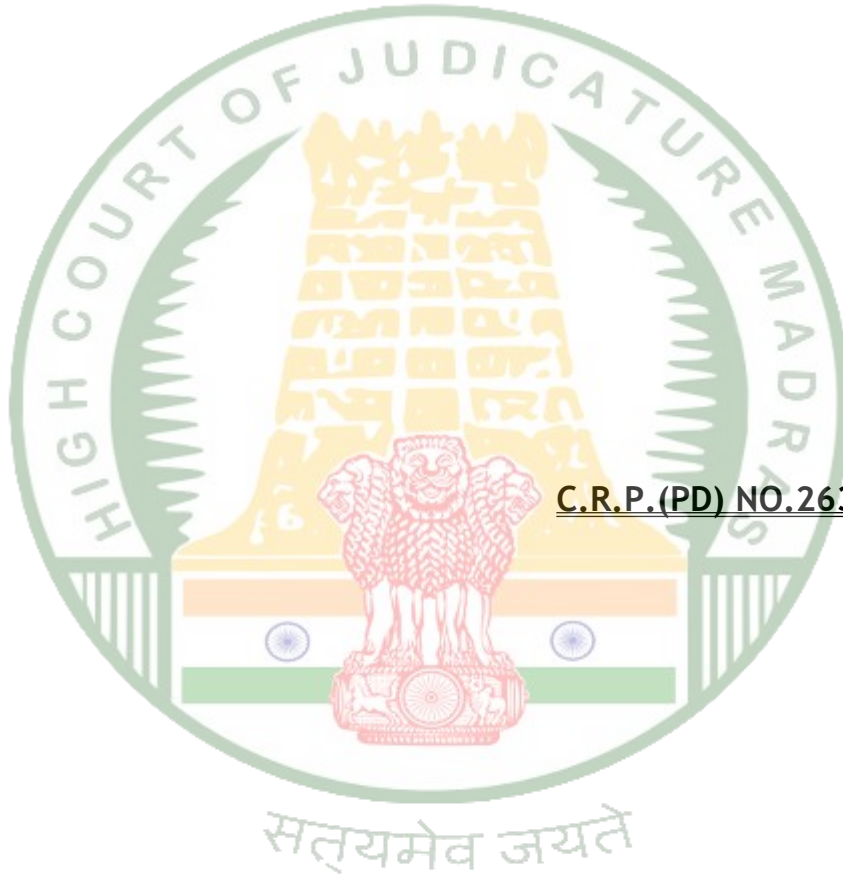
The District Munsif
Thiruppur.



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M.GOVINDARAJ, J.

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