

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP (NPD) No.105 of 2018

and

C.M.P.No.544 of 2018

Madheswari

.. Petitioner

-Vs-

1.C.Banumathi

2.K.Padmavathi

3.Chinnathayee

4.Indira Gandhi

5.Shanthi

6.Kamala

7.Santhivel Murugan

8.V.Shankar

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the Petition and order dated 16.12.2017 in R.E.A. No.69 of 2017 in R.E.P.No.45 of 2011 in O.S.No.52 of 2005 on the file of III Additional District Court, Salem.

For Petitioner : Mr.K.Selvaraj

For Respondents : Mrs.Hema Sampath (Senior Counsel)

for Mrs.R.Meenal (For R1)

No appearance (For R2 to R8)

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ORDER

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 16.12.2017, passed in R.E.A. No.69 of 2017 in R.E.P.No.45 of 2011 in O.S.No.52 of 2005 by the learned III Additional District Judge, Salem.

2.The second respondent herein has filed the above suit in O.S.No.52 of 2005 before the III Additional District Court, Salem, against the defendants namely Chinnathayammal and other defendants for the relief of declaration of her title in the suit item-III of the suit property and for recovery of possession. In respect of the above said suit, the defendants filed their written statement on 27.07.2005 and the suit was decreed as prayed for on 19.12.2006.

3.As against the said order, the defendants have filed the appeal suit in A.S.No.411 of 2007 and the plaintiff has filed the appeal suit in A.S.No.465 of 2008 and the same were dismissed by this Court and thereafter, the decree holder has filed a Petition in R.E.P.No.45 of 2011 for possession in respect of Item-III of the suit property. As no counter was filed Delivery ordered on 22.03.2012, and the said order has become final. The R.E.A. No.48 of 2012 was filed by Madheswari, the Revision Petitioner before the III Additional District Court, Salem, under Order 21 Rule 97 of the Code of Civil Procedure. A detailed counter affidavit was filed by the second respondent in the aforesaid R.E.A.No.48 of 2012 and the said R.E.A.No.48 of 2012 was dismissed on 19.12.2016.

4.Challenging the aforesaid order passed in R.E.A.No.48 of 2012, the petitioner has filed CMASR No.28 of 2008 before this Court along with the condone delay petition. Thereafter, the petitioner has filed R.E.A.No.69 of 2017 under Section 151 of the Code of Civil Procedure to stop the amin from taking further steps in pursuance to the order passed by the Executing Court to re-deliver or possession in the suit property.

5. According to the learned counsel for the petitioner, the petitioner has filed an appeal against the above said order. Therefore, at this stage, the amin has proceeded to take further action, in pursuance to the order in R.E.A. No.48 of 2012. The petitioner is put to untenable hardship and the appeal has to become infructuous.

6. The learned Senior Counsel for the first respondent would submit that the prayer in the R.E.A.No.48 of 2012 itself is not maintainable. So far, the petitioner has not obtained an interim order in the CMA.SR.No.28 of 2008 and there is no legal implement to proceed with the amin as ordered by the Court below.

7. According to the learned counsel appearing for the petitioner, the petitioner has challenged the order passed in R.E.A.No.48 of 2012 on the file of the III Additional District Court, Salem and the same was dismissed and as against the said order, the petitioner filed CMA.SR.No.28 of 2008 and along with the aforesaid appeal, the petitioner also filed a condone delay petition before this Court and the same is pending. The petitioner had already filed an appeal against order passed in R.E.A.No.48 of 2012. Therefore, the present Civil Revision Petition is not maintainable and the same is liable to be

dismissed.

8.In fine, the present Civil Revision Petition is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

01.02.2018

Speaking/Non-Speaking order
Index :Yes/No
Internet:Yes/No

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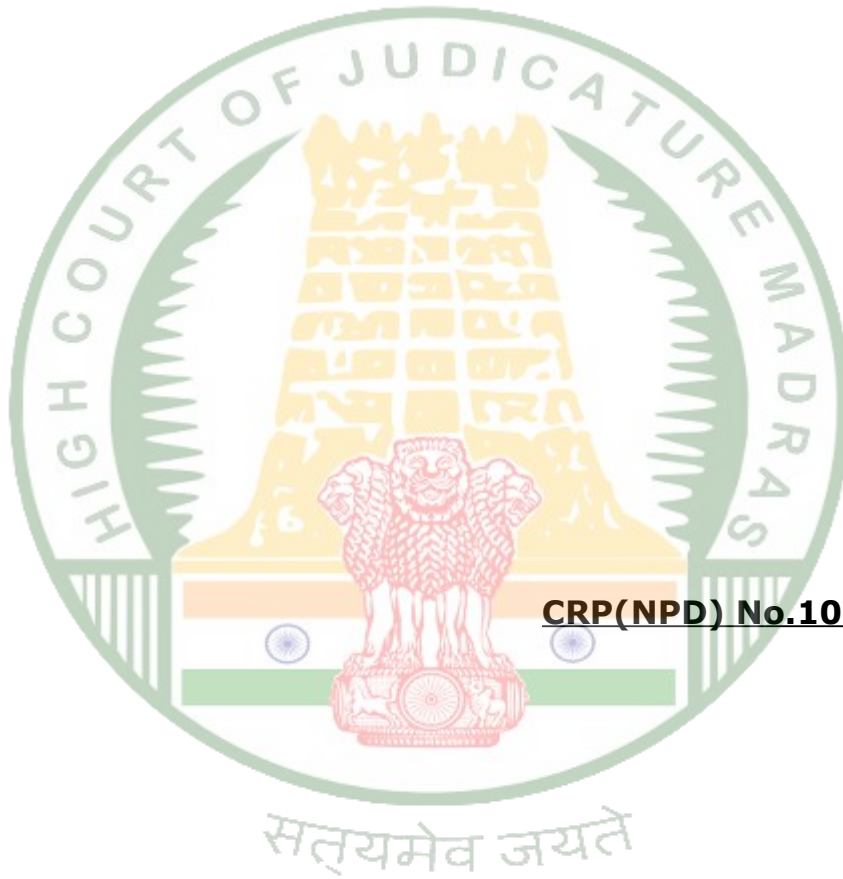
The III Additional District Court,
Salem.



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D. KRISHNAKUMAR J.,

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