

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.03.2018

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

CIVIL REVISION PETITION (PD) No.1106 of 2018
and C.M.P.No.5805 of 2018

S.Sankari

... Petitioner

vs

1.G.Ashok Kumar

2.G.Babu

3.G.Saraswathi

4.G.Sasikala

5.G.Vimala

6.M.Palayam

7.P.Ponnuvel

G.Thavamani

... Respondents

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The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order made in unnumbered I.A.SR.1897 of 2018 in O.S.No.93 of 2014 on the file of the District Judge, District Court - II Kanchipuram, dated 02.03.2018 and

consequently, direct him to number the interlocutory application and consider the same on merits and in accordance with law.

For Petitioner ... Mr.B.Vijay

ORDER

The Civil Revision Petition has been filed to set aside the order made in unnumbered I.A.SR.1897 of 2018 in O.S.No.93 of 2014 on the file of the District Judge, District Court - II Kanchipuram, dated 02.03.2018 and consequently, direct him to number the interlocutory application and consider the same on merits and in accordance with law.

2.According to the petitioner/third defendant, respondents 1 to 5/plaintiffs filed a suit in O.S.No.93 of 2014 against the respondent Nos.6, 7 and 8 and the petitioner/third defendant under Order VII Rule 1 of CPC seeking declaration, partition and permanent injunction. In the aforesaid suit, the petitioner filed an application under Section 12 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 r/w Order 14 Rule 1 of CPC to try the issue of under valuation of suit and deficit Court fee thereon may be tried as preliminary issue. The said application was returned on 02.03.2018 with an endorsement that

"Issues already framed. Hence this petition is returned." Aggrieved by the said return order, the petitioner filed the present Civil Revision Petition.

3.The learned counsel for the petitioner submitted that in the light of the decision of the Division Bench of this Court in **S.N.S.Sukumaran vs.C.Thangamuthu [2012 (5) CTC 705]** and under Section 12 of Tamil Nadu Court Fees and Suits Valuation Act, 1955 and Order 14 Rule 1 of CPC the issue relating to undervaluation of suit and pecuniary jurisdiction must be decided as preliminary issue. Hence, the impugned order passed by the Court below is liable to be set aside.

4.Heard the learned counsel for the petitioner and perused the materials available on record.

5.On perusal of records, it is seen that, already issues have been framed by the trial Court. Therefore, at this stage, the trial Court cannot go into the factual position of the case. Hence, the petitioner has to represent the papers before the trial Court along with his explanation under the provisions of law.

6.Considering the above facts and circumstances of the case and submissions made by the learned counsel for the petitioner, this Court is inclined to pass the following order:

"(i) The order dated 02.03.2018 passed in unnumbered I.A.SR.1897 of 2018 in O.S.No.93 of 2014 by the learned District Judge, District Court No.II, Kanchipuram is set aside.

(ii)The petitioner is directed to represent the papers before the Court below within a period of one week from the date of receipt of a copy of this order and if it is in order, the learned District Judge, District Court No.II, Kanchipuram is directed to number the said application and dispose of the same on merits and in accordance with law after affording opportunity to both sides.

(iii)The Civil Revision Petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

20.03.2018

Speaking/Non speaking order.

Index: Yes/No.

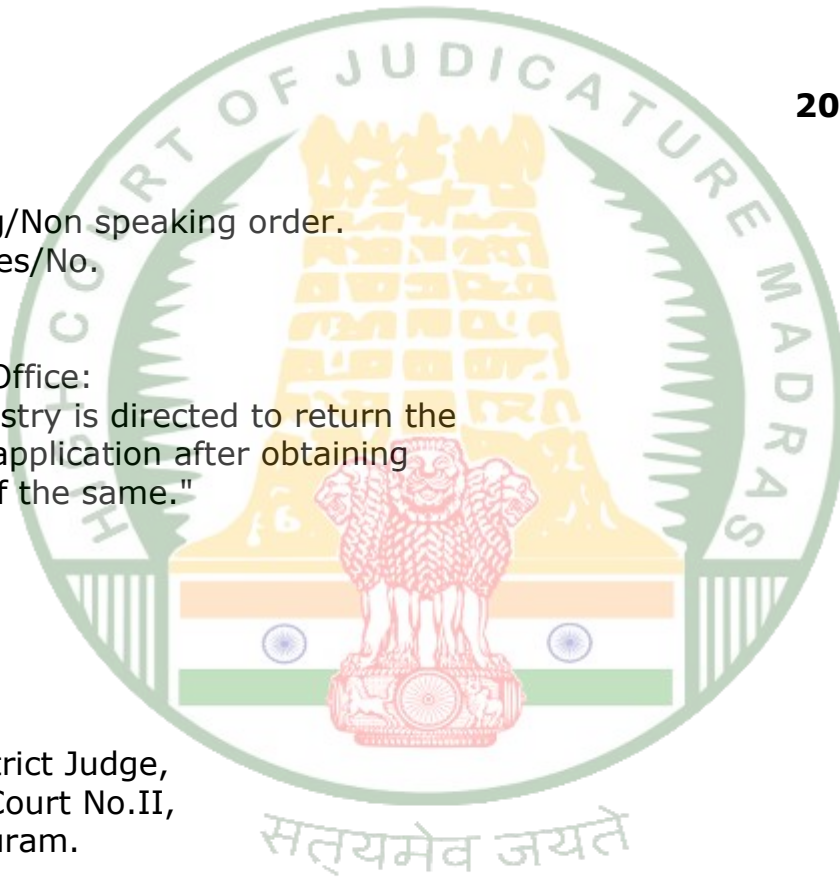
Note to Office:

The Registry is directed to return the original application after obtaining a copy of the same."

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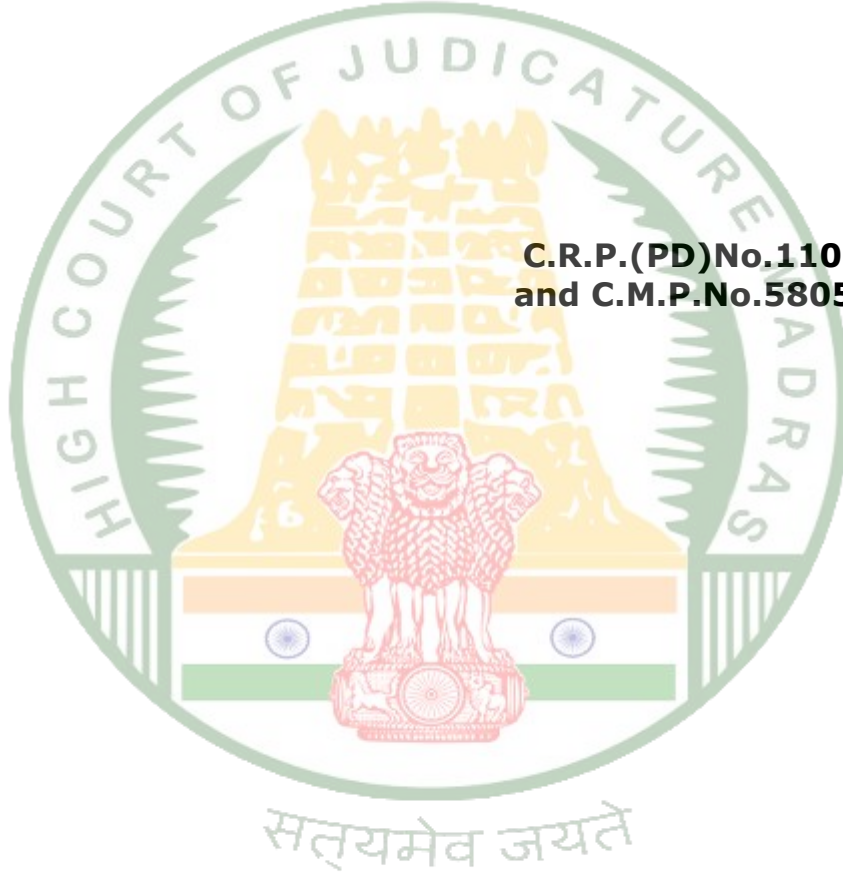
To

The District Judge,
District Court No.II,
Kanchipuram.



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D.KRISHNAKUMAR,J.
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and C.M.P.No.5805 of 2018**

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Date: 20.03.2018