

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 114 of 2018
and
C.M.P. No. 576 of 2018

Palaniammal .. Petitioner

Vs

Karuppaiah .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and final Order dated 09.11.2017 made in I.A. No. 862 of 2015 in O.S. No. 87 of 2004 on the file of the Subordinate Judge, Namakkal and pass such further orders.

For Petitioner : Mr.K.S. Karthik Raja

For Respondent : No Appearance

ORDER

The revision petition arises against the Fair and final Order dated 09.11.2017 made in I.A. No. 862 of 2015 in O.S. No. 87 of 2004 on the file of the Subordinate Judge, Namakkal.

2. The respondent has filed a suit in O.S. No. 87 of 2004 for recovery of money against the petitioner and other defendants. In the aforesaid suit, an application in I.A. No. 862 of 2015 was filed by the petitioner, to decide the preliminary issue, whether the document relied by the respondent is the loan document or mortgage deed.

3. The learned counsel for the petitioner would submit that the aforesaid document is only a loan document and therefore the suit is certainly barred by limitation. The trial court has dismissed the said application, observing that the issue could be decided only at the time of trial in the suit. Challenging the same, the present revision petition is filed.

4. Considered the facts of the case and the submissions of the learned counsel for the petitioner.

5. This Court is of the view that the said issue raised by the petitioner is a trial able issue. Therefore, the question as to whether the

suit is barred by limitation under the document relied by the respondent/ plaintiff, has to be decided after letting in evidence by both the parties. However, the court below is directed to frame issues, if not already framed along with the present issue raised by the petitioner, in the instant application.

6. The Civil Revision Petition is dismissed, with the above direction. Consequently, the connected Miscellaneous Petition is closed. No costs.

22.02.2018

Index : Yes/ No

Speaking order/ Non speaking order

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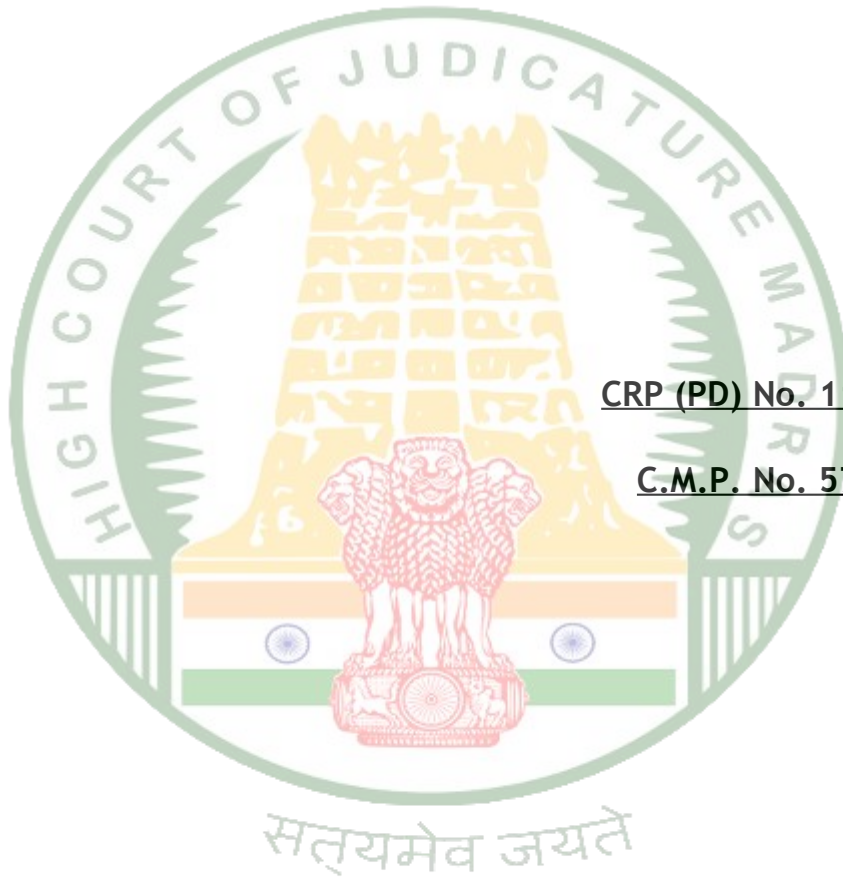
To

The Subordinate Court
Namakkal.

सत्यमेव जयते
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D. KRISHNAKUMAR J.,

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