

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2018

CORAM

THE HON'BLE MR. JUSTICE **P.VELMURUGAN**

CRP.(NPD).No. 1460 of 2018 and
CMP.No. 7784 of 2018

1. Santhalingam
2. Sivagami
3. Jayachandran

... Petitioners

Vs.

1. Ramathal
2. Parathal
3. Gopalakrishnan

... Respondents

Prayer : Civil Revision Petition filed Under Article 227 of Constitution of India to set aside the fair and decreetal order dated 22.03.2018 made in I.A.No.333 of 2018 in O.S.No.262 of 2010 on the file of the Principal Subordinate Court, Coimbatore.

For Petitioners : Mr.K.Venkatasubban

For Respondents : No appearance

ORDER

The Civil Revision Petition has been filed against the Order dated 22.03.2018 made in I.A.No.333 of 2018 in O.S.No.262 of 2010 on the file of the Principal Subordinate Court, Coimbatore.

2. The revision petitioners are the defendants 3, 6 and 7 in the suit in O.S.No.262 of 2010 on the file of the learned Principal Subordinate Judge, Coimbatore. The respondents 1-3 have filed a suit against the present revision petitioners and others, declaring that the Will dated 13.11.1996, vide document No.78 of 1996 executed by one Deivanaiammal is true and valid. When the suit is pending, the revision petitioners/defendants have filed petition under Section 10 of CPC to stay the above case till the disposal of the second appeal in S.A.No.1509 of 2007, on the file of this Court. The trial Court after hearing the matter dismissed the application. Feeling aggrieved by the order passed by the trial Court, the revision petitioners/defendants filed this revision petition.

3. Heard Mr. K.Venkatasubban, the learned counsel appearing for the revision petitioners. Despite service of notice and the names of the respondents having been printed in the cause list, none appearers for the respondents. Perused the records.

4. The learned counsel appearing for the revision petitioners would submit that there is an earlier suit in O.S.No.1512 of 2017 on the file of the I

Additional District Munsif, Coimbatore and against that order of dismissal, an appeal was filed before the Principal Sub Court, Coimbatore in A.S.No.82 of 2005 which is also dismissed. Against that a second appeal has been preferred in S.A.No.1509 of 2007 and the same is pending before this Court. Further he would contend that in the above said suit, the title and interest of the said Deivaniammal is questioned and the same is pending before this Court in S.A.No.1509 of 2017. Meanwhile, the present respondents have filed a suit alleging that the said Deivaniammal executed a Will in favour of them and claiming that the Will is true and valid. When the subject matter is pending before this Court in S.A.No.1509 of 2017, that the title and interest of Deivaniammal itself questioned, then the executions of Will by the said Deivaniammal, regarding the suit property is also questioned. Therefore, under such circumstances, since the very same subject is pending before this Court, the suit filed by the respondents would not be continued. Therefore, the learned counsel for the revision petitioners prays to allow this revision petition.

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5. Perusal of records shows that the respondents have filed a suit in O.S.No.1512 of 2017 and against the order of dismissal, an appeal was filed in

A.S.No.82 of 2005, which was also dismissed. Against which, a second appeal has been preferred in S.A.No.1509 of 2007 which is pending before this Court. Further, the respondents filed yet another suit in O.S.No.262 of 2010 on the file of the Principal Sub Court, Coimbatore. At this stage, the revision petitioners have filed an application in I.A.No.333 of 2018 in O.S.No.262 of 2010 under Section 10 of C.P.C., to stay the proceedings till the disposal of the second appeal in S.A.No.1509 of 2017 before this Court. Since in the earlier suit, the title and interest of the said Deivaniammal itself was questioned, the present question of executing the Will by the said Deivaniammal and declaring the said Will as true and valid is also in question.

6. Under such circumstance, prima facie case shows that the findings of the S.A.No.1509 of 2007 will affect the present suit. Therefore, in order to prevent conflict of the decision, the order passed in the petition under Section 10 of C.P.C. is liable to be set aside.

7. Accordingly, the civil revision petition stands allowed and the order dated 22.03.2018, passed by the trial Court in I.A.No.333 of 2018 in O.S.No.262 of 2010 is set aside and the proceedings in O.S.No.262 of 2010

are stayed till the disposal of the second appeal in S.A.No.1509 of 2007, which is pending before this Court. Consequently, connected miscellaneous petition is closed. No costs.

06.06.2018

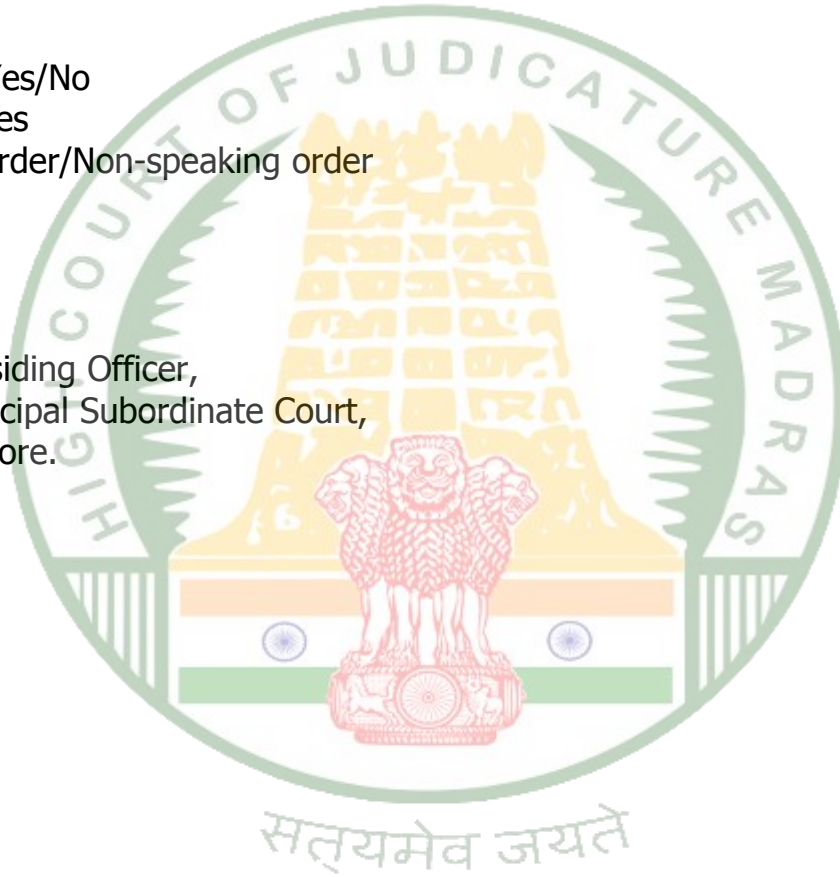
Index :Yes/No

Internet :Yes

Speaking order/Non-speaking order
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To

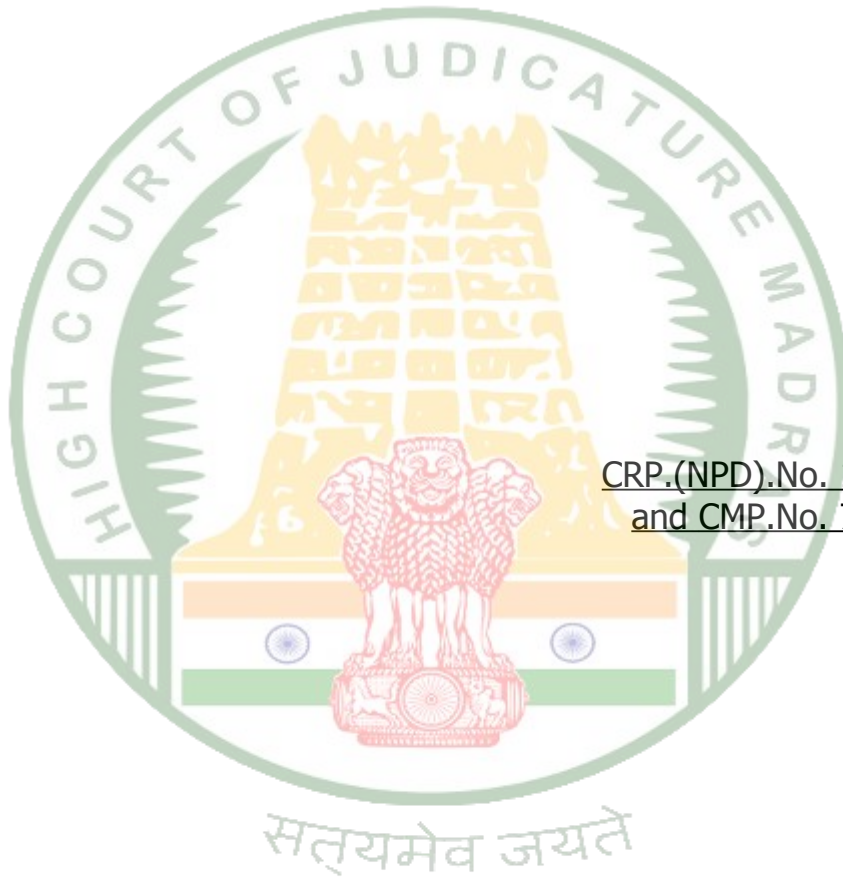
1. The Presiding Officer,
The Principal Subordinate Court,
Coimbatore.



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P.VELMURUGAN, J.,

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