

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.06.2018

Coram:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**C.R.P.(NPD)No.1756 of 2018

Ramachandran

... Petitioner

Vs.

1. S.S.J.Visagar
2. Vinodhini
3. Vimala
4. Vidhya
- 5.Senthamizhselvi
6. Maruvammal
7. The Sub Registrar
Sirkali Town and Munsifi
Nagapattinam District.
8. Government of Tamilnadu
rep. by The District Collector,
Nagapattinam District.

... Respondents

Civil Revision Petition has been filed under Article 227 of the Constitution of India seeking direction for filing and early disposal of unnumbered IA of 2017 in O.S.No.123 of 2015, on the file of the learned Principal Sub Court, Mayiladuthurai.

For Petitioner : Mr.S.Sounthar

ORDER

This civil revision petition has been filed seeking direction of this Court to the learned Principal Sub Court, Mayiladuthurai, for early disposal of unnumbered IA of 2017 in O.S.No.123 of 2015.

2 The petitioner is the plaintiff and the respondents are the defendants in suit in O.S.No.123 of 2015 for declaration and permanent injunction . The defenants also filed a suit in O.S.No.219 of 2015 in respect of the same property before the very same Court the Principal Sub Court, Mailaduthurai. Both the suits were tried together and the revision petitioner's suit in O.S.No.123 of 2015 was allowed by judgement and decree dated 28.06.2017. According to the revision petitioner, in the above judgment there is no relief granted in respect of recovery of possession. Hence the revision petitioner/plaintiff filed an interlocutory application in unnumbered I.A. /2017 seeking to rectify the same. But the said application was not even numbered till date. Hence the ptitioner has come forward with the present civil revision petition seeking speedy disposal of the unnumbered interlocutory application.

3 The learned counsel for the revision petitioner/plaintiff contended that the trial Court while passing the judgment, eventhough elobarately discussed all the points, has failed to grant relief of recovery of possession, since the suit filed by the petitioner was allowed in his favour. The trial Court ought to have granted the relief of recovery of possession since the suit was decreed in favour of the

revision petitioner. Hence the application filed by the plaintiff has to be taken on file and the same has to be allowed.

4 Heard the learned counsel appearing for the revision petitioner/plaintiff and perused the materials available on record.

5 On a perusal of the judgment and decree dated 28.06.2017, it is seen that there is no relief in respect of recovery of possession. The main contention of the revision petitioner is that the trial Court ought to have granted the relief of recovery of possession, since the trial Court allowed the suit filed by the petitioner. The application filed by the petitioner was returned by the Registry of the Trial Court stating that there was no prayer with respect to the relief of recovery of possession. The petitioner re-presented the application by making an endorsement that there is a prayer for recovery of possession and the Trial Court also framed the issue on that aspect. But the application was neither returned nor taken on file till date.

6 Though the relief of recovery of possession has been sought for by the revision petitioner, no relief was expressly granted by the trial Court. If at all any error apparent on the face of the record, the petitioner ought to have sought it by other mode i.e. by way of appeal

or review application and not by filing application of this nature to amend the decree which was already granted. This Court is of the view that the application filed by the revision petitioner seeking to amend the judgment and decree, is not maintainable. The petitioner has other remedy by way of appeal or review application.

7 However, since the trial Court has not yet numbered the application and the same has not yet been either returned or rejected, the trial Court is directed to return the application to the revision petitioner in accordance with law.

8 With the above observations and direction, the civil revision petition is disposed of. No costs.

12.06.2018

Index: Yes/No

Internet: Yes/No

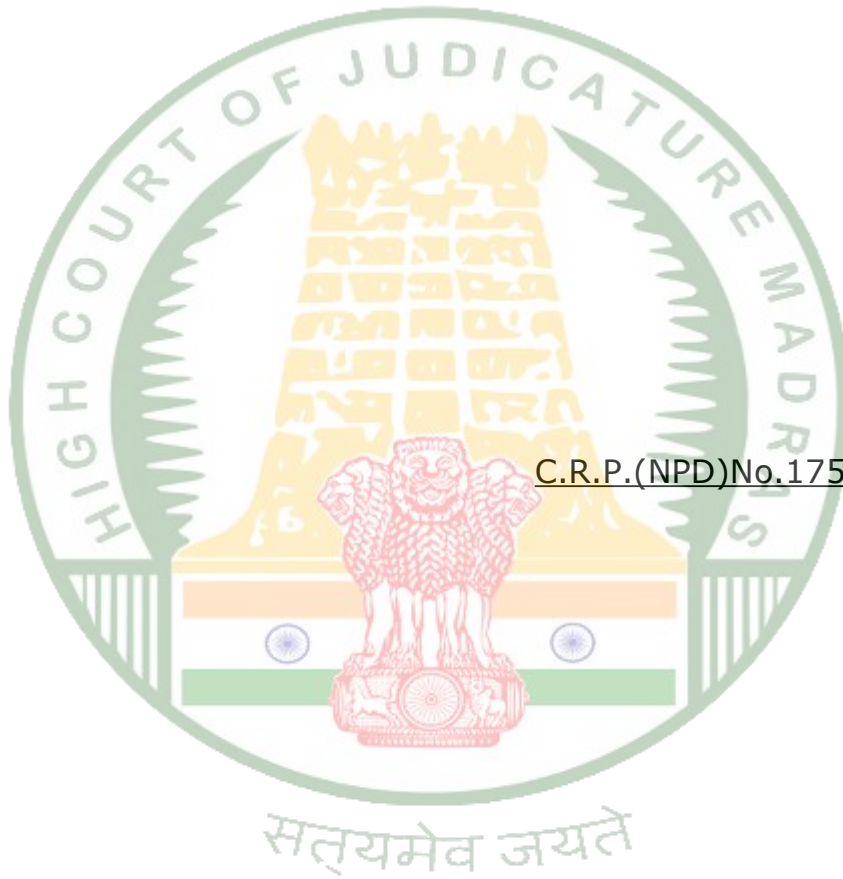
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To

The Principal Sub Court,
Mayiladuthurai.

P.VELMURUGAN, J.,

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