

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1225 of 2015 and
M.P.No.1 of 2015

D.Samiyathal

.. Petitioner

Vs.

1.S.Tamilselvan

2.S.Devi

3.S.Mohanasundaram

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 29.01.2015 made in Tr.O.P.No.83 of 2014 on the file of the Principal District Court, Erode.

For Petitioner : Mr.I.C.Vasudevan

For Respondents : No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 29.01.2015 made in Tr.O.P.No.83 of 2014 on the file of the Principal District Court, Erode.

2. The petitioner is plaintiff and respondents are defendants in O.S.No.36 of 2013 and the petitioner is plaintiff and first respondent is defendant in O.S.No.129 of 2013. The petitioner filed O.S.No.36 of 2013 for recovery of money against the respondents 1 to 3 based on the promissory note executed by one Shanmugam, father of the respondents 1 & 3 and husband of the second respondent. The petitioner filed O.S.No.129 of 2013 against the first respondent for specific performance of agreement of sale or in alternative, refund of advance amount of Rs.8,00,000/- with interest. The respondents are contesting the suits by filing written statements. First respondent filed present Tr.O.P.No.83 of 2014 for trial of both the suits O.S.Nos.36 and 129 of 2013 pending on the file of the I Additional Subordinate Court, Erode and Principal Subordinate Court, Erode respectively, in one and the same Court by transferring one of the said suits to other Court.

3. According to the first respondent, the parties and the issues involved in both the suits are one and the same. Unless both the suits are tried together, there will be conflicting judgments delivered by the two Courts on the same issue.

4. The petitioner filed counter affidavit stating that the issues involved in both the suits are different. The first suit is for recovery of money based on the promissory note executed by the father of the respondents 1 & 3 and husband of the second respondent. The second suit is filed only against the first respondent for specific performance of agreement of sale dated 14.10.2011 executed by the first respondent in favour of the petitioner or in alternative, refund of advance amount of Rs.8,00,000/- with interest.

5. The learned Judge allowed Tr.O.P.No.83 of 2014 on the ground that the respondents in both the suits have taken a plea that the petitioner has no capacity to pay the money as alleged by her. In both the suits, the plaintiff is one and the same and the defendants are family members.

6. Against the said order dated 29.01.2015 made in Tr.O.P.No.83 of 2014, the present Civil Revision Petition is filed by the petitioner.

7. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice was served on the respondents and their names are printed in the cause list, there is no representation on behalf of the respondents either in person or through counsel.

8. From the materials available on record, it is seen that the defence of the respondents in both the suits is that the petitioner has no capacity to pay the amount as alleged in the suit. In view of common issue, the learned Judge has allowed Tr.O.P.No.83 of 2014 and transferred the suit O.S.No.36 of 2013 pending on the file of the I Additional Subordinate Court, Erode, to the file of the Principal Subordinate Court, Erode, wherein O.S.No.129 of 2013 is pending and ordered joint trial. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 29.01.2015.

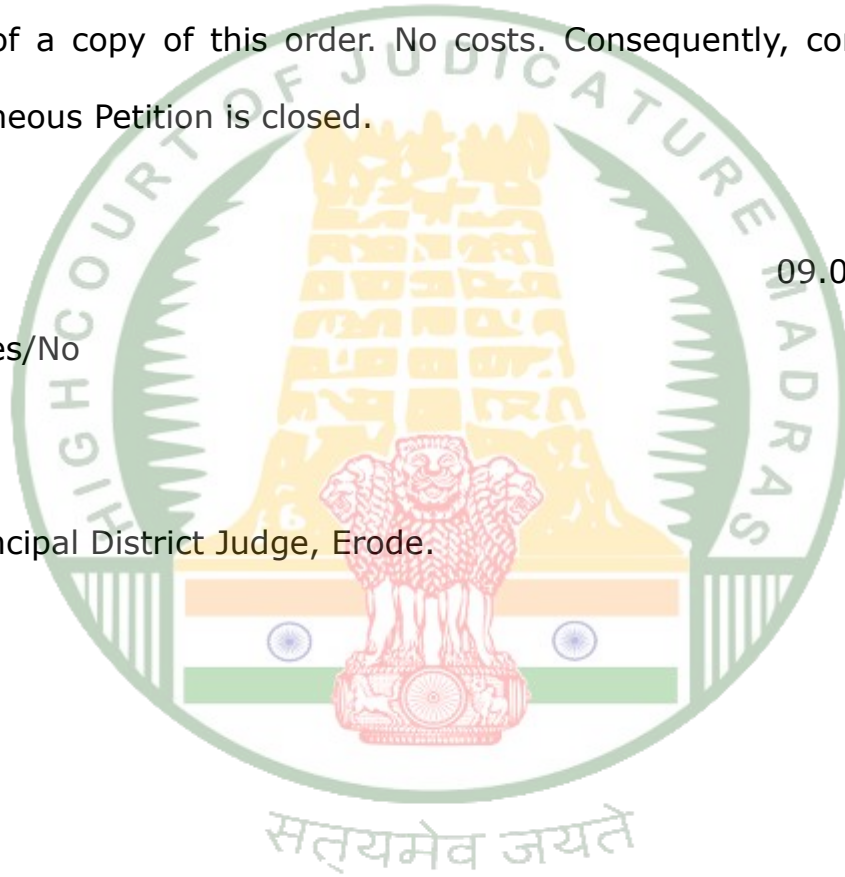
9. In the result, the Civil Revision Petition is dismissed. The learned Principal Subordinate Judge, Erode, is directed to dispose of both the suits in O.S.Nos.36 and 129 of 2013 as expeditiously as possible in any event, not later than four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

09.02.2018

Index:Yes/No
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To

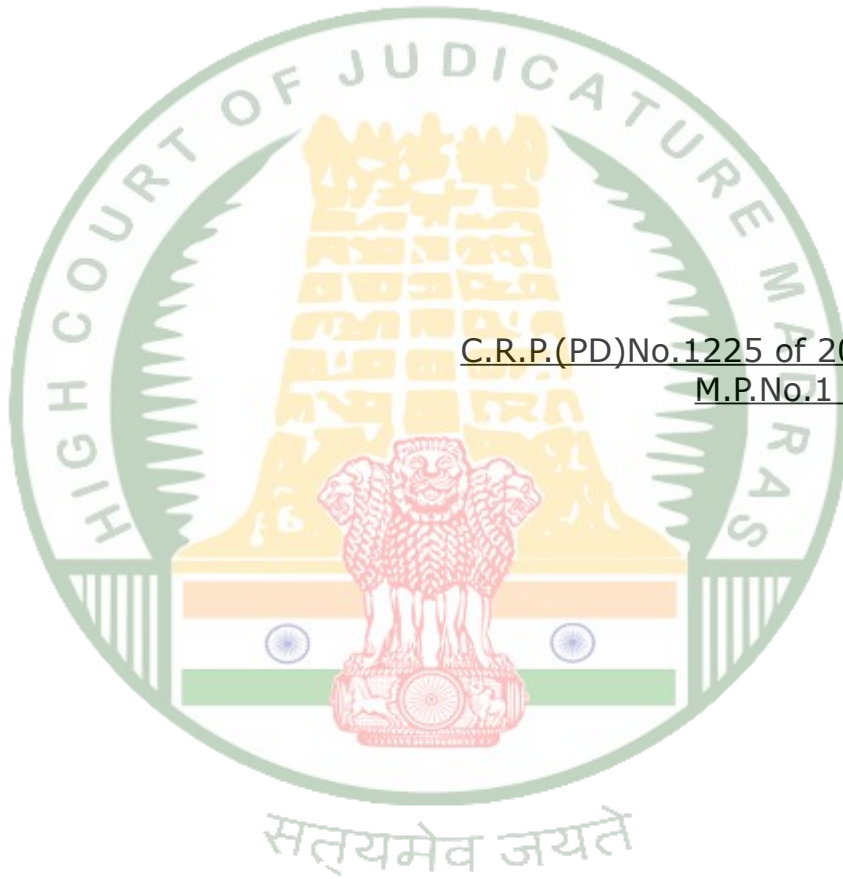
The Principal District Judge, Erode.



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V.M.VELUMANI,J.

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