

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.R.P.(NPD).No.3371 of 2011
and
M.P.No.1 of 2011

1.K.C.Varadarajan
2. Pandian

... Petitioners

Vs

1.M.Bharathi
2. K.Kalaiselvi
3. K.Umashankari
4. K.Gnanasundari

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decretal order in I.A.No.7 of 2011 in A.S.No.44 of 2007 dated 21.01.2011, on the file of the Sub-Court, Vellore in allowing the application under Order 41 Rule 27 of the Civil Procedure Code, 1908.

For Petitioners

: Mrs.V.Srimathi
for Mr.V.Raghavachari

For Respondents

: No Appearance

ORDER

The shortest question that can possibly reach this Court but with a possibility to impact the outcome of A.S.No.44 of 2007 pending before the Sub-Court, Vellore, is involved in this revision petition.

2. The respondents have instituted a suit in O.S.No.511 of 1999 before the Principal District Munsif, Vellore for bare injunction. The revision petitioners as defendants in the said suit have resisted the very title of the plaintiffs over the suit property.

3. The respondents/plaintiffs had lost the suit, and challenging the said decree in A.S.No.44 of 2007 before the First Appellate Court, the respondents/plaintiffs have filed I.A.No.7 of 2011 seeking leave of the Court to produce additional documents under Order 41 Rule 27 CPC. The revision petitioners/defendants have not filed the counter, even though the appeal was still pending final hearing. Vide impugned order dated 21.01.2011, the First Appellate Court has allowed this application to file additional documents under Order 41 Rule 27 CPC on the solitary ground that no counter was filed.

4. The learned counsel for the revision petitioners/defendants would contend that it is a settled principle that any application filed under Order 41 Rule 27 CPC ought to be taken along with the appeal and irrespective whether any counter is filed or not, duty is cast on the appellate court to consider whether any of the twin conditions prescribed under Order 41 Rule 27 CPC are made out before allowing the petition. The learned counsel for the petitioners also circulated an authority in ***State of Rajasthan Vs.T.N.Sahani*** [2000 STPL(LE) 29230 SC].

5. When the case was posted on 10.04.2018, there was no representation for the respondents. Hence, this case was posted again today. There is no change of status quo vis-a-vis the representation to be made by the respondents.

6. This Court finds considerable force and merit in the submissions of the learned counsel for the petitioners. Accordingly, this Civil Revision Petition is allowed and the decretal order passed in I.A.No.7 of 2011 is hereby set aside and the said petition is remanded back to the First

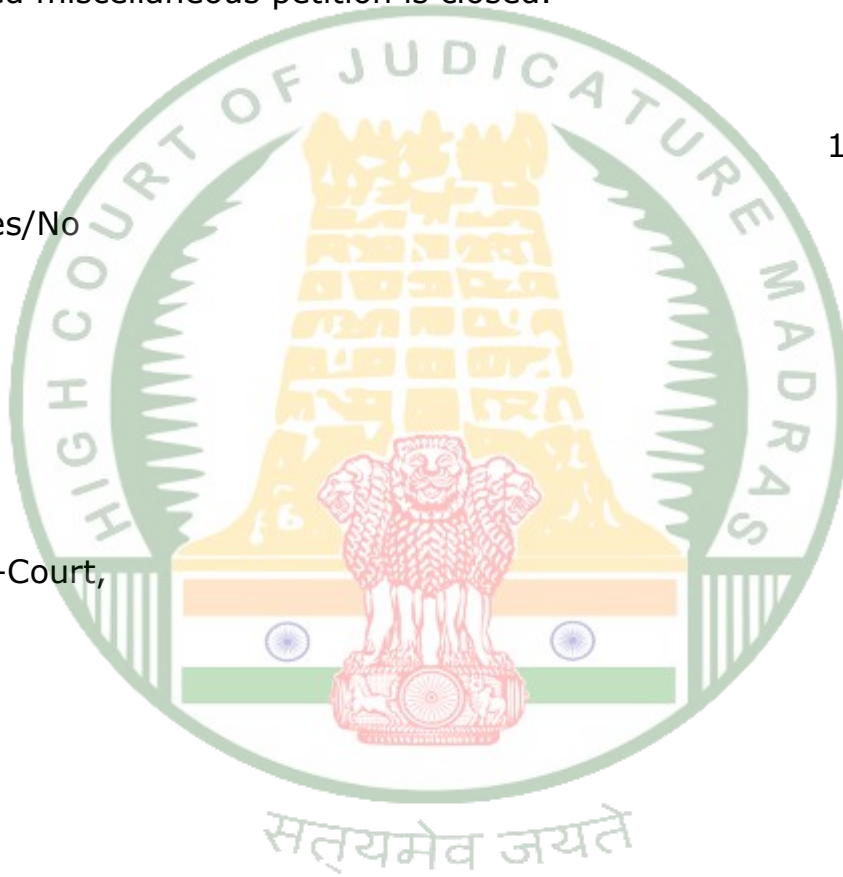
Appellate Court, and the First Appellate Court will now take it up along with A.S.No.44 of 2007. Since the appeal is more than a decade old, the First Appellate Court shall take utmost endeavour to dispose of the appeal at any rate on or before 31.07.2018. No costs. Consequently, connected miscellaneous petition is closed.

11.04.2018

Index:Yes/No

ssn

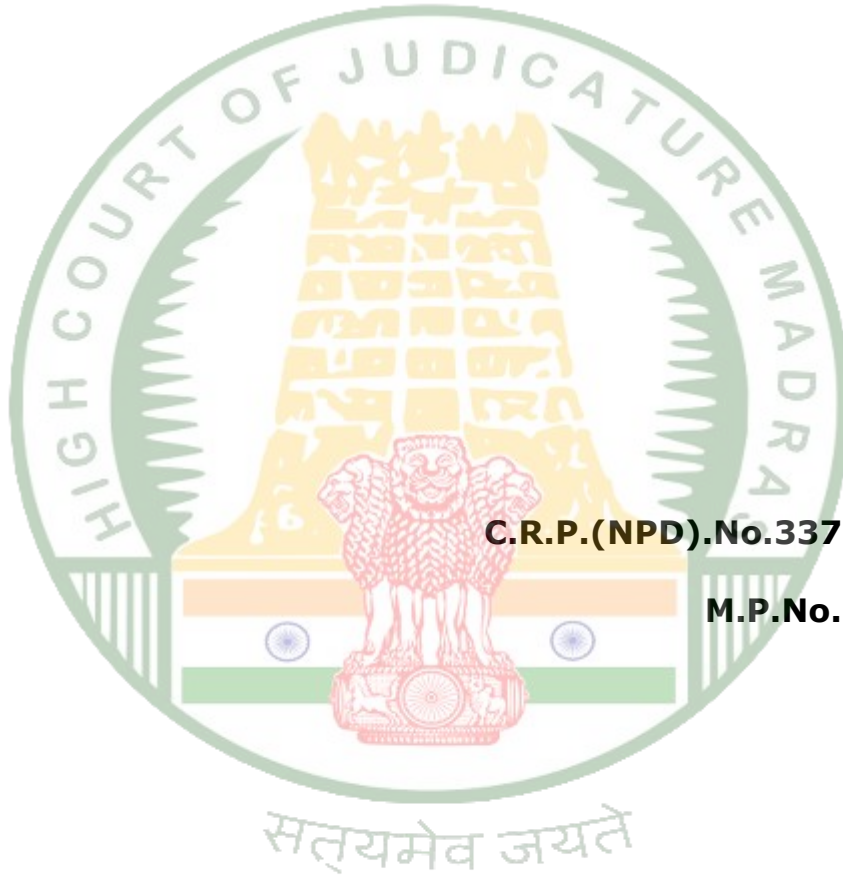
To

The Sub-Court,
Vellore.

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N.SESHASAYEE, J.,

ssn



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