

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.04.2018

CORAM : THE HONOURABLE MR.JUSTICE N.SESHASAYEE

CRP.(NPD) No.3901 of 2011
and M.P.No.1 of 2011

1.Venkatachalam
2.Pappathi
3.Palaniyammal
4.Pavayee
5.Sarasu
6.Sudha
7.Suresh

... Petitioners

Vs

S.Thangavelu

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order of the Subordinate Judge's Court at Tiruchengode, dated 18.02.2010 in I.A.No.120 of 2008 in A.S.No.13 of 2008.

For Petitioners : Mr.P.Valliappan

For Respondent : Mr.S.Natanarajan

ORDER

1. The plaintiff, the respondent herein, has instituted a suit in O.S.No.498 of 1996 on the file of the District Munsiff, Tiruchengode, for declaration of his right of way over the suit property and lost the suit. Challenging the

said decree, the respondent had preferred an appeal in A.S.No.13 of 2008 before the Sub Court, Tiruchengode. Before the Appellate Court, the respondent has filed an application in I.A.No.120 of 2008 for production of two documents viz., 17.01.1978 and 03.09.1997 as additional evidence under Order XLI Rule 27 of CPC. According to the respondent, these documents were executed by the second revision petitioner. This application was allowed on 18.02.2010, which is now challenged in this revision.

2. The learned counsel for the revision petitioners 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 a duty is cast on the Appellate Court to consider whether either of the twin conditions prescribed or both of them as provided for receiving additional evidence under Order 41 Rule 27 CPC are available before allowing the application. The learned counsel for the petitioners circulated an authority in ***M.Ayyaswami and another Vs. S.P.Ganesan and another*** [1994-2-L.W.376]

4. This Court finds considerable force and merit on 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.120 of 2008 is hereby set aside and the said application is remanded back to the First Appellate Court, which the First Appellate Court may take up for

than nine years old, the First Appellate Court shall take utmost endeavour to dispose of the appeal and at any rate before 31.07.2018. No costs. Consequently, connected miscellaneous petition is closed.

12.04.2018

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Index : Yes / No
Speaking Order / Non-speaking Order

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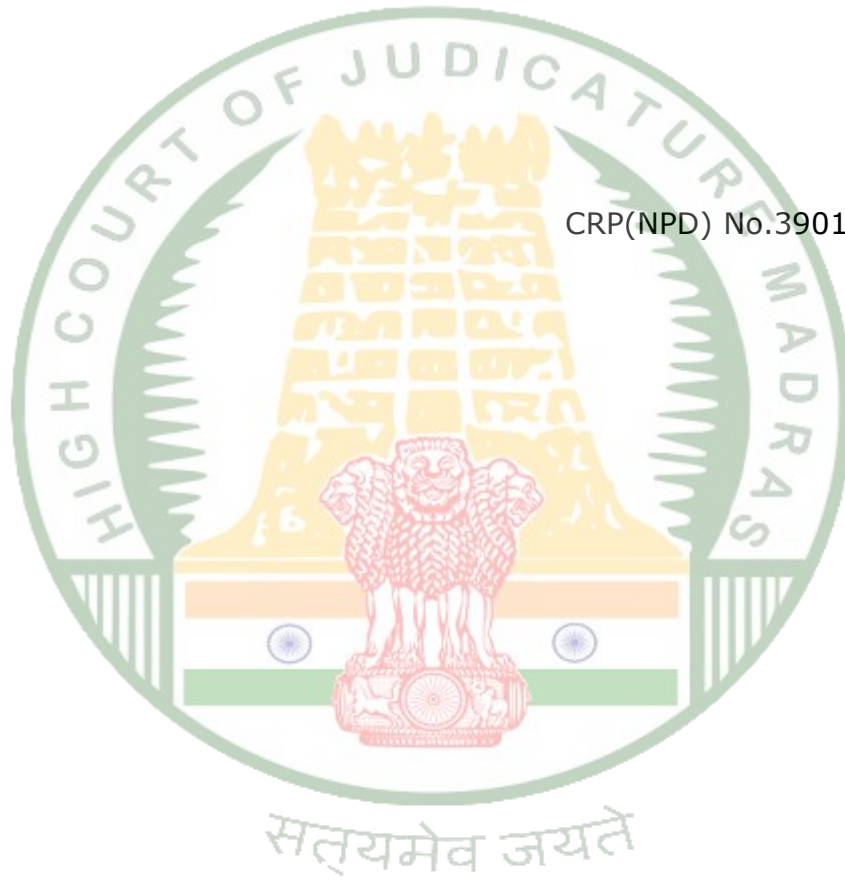
- 1.The Sub Judge
Tiruchengode.
- 2.The District Munsif
Tiruchengode.



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N.SESHASAYEE, J.,

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