

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 320 of 2018
and
C.M.P. No.1865 of 2018

M. Marayee @ Marayammal

.. Petitioner

Vs

K. Kamalathal (Died)

1. C. Kaliaswami
2. N. Lakshmi
3. R. Arukkani
4. C. Krishnamoorthi
5. K. Sakthivel
6. C. Kandaswami Gounder
7. K. Rajendran
8. Saradha @ K. Subbulakshmi
9. Poosappan
10. N. Periyaswamy
11. S. Jaganathan
12. P. Kumaraswamy
13. G. Lakshmi
14. P. Rangaswamy
- G. Kandaswamy (died)
15. P. Saravanakumar
16. M. Nedunselian
17. D. Mallika

18. P. Saroja
 19. C. Ramesh
 20. C. Suresh
 21. S. Kavitha
 22. K. Pavayee
 23. S. Shobha
 24. S. Amudha

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 18.01.2018 made in I.A. No. 53 of 2018 in O.S. No.307 of 2005 on the file of the Principal Subordinate Court, Erode by allowing the Civil Revision Petition.

For Petitioner : Mr.D. Gopal

For Respondents : Mr. N. Manoharan for R1 to 3 & 6

Mr. Guruprasad for R4 & R5

No Appearance for R7 to 24

ORDER

This Revision arises against the fair and decreetal order dated 18.01.2018 made in I.A. No. 53 of 2018 in O.S. No.307 of 2005 on the file of the Principal Subordinate Court, Erode.

2. The petitioner has filed an Interlocutory Application in I.A.

No.53 of 2018 under Order XVI Rule 6 seeking to summon Tamilnadu Electricity Board to produce the petition mentioned documents. The said application was dismissed by the court below. Against the same, the revision petition is filed before this Court.

3. The learned counsel for the respondents 1 to 3 & 6, would submit that the aforesaid revision petition is not maintainable, since the petitioner has not arrayed the legal heirs of the deceased defendants/ 7th and 12th respondents herein, who are already parties in the said suit. Hence, the application filed by the petitioner is liable to be rejected on the aforesaid ground itself.

4. The learned counsel for the petitioner also fairly conceded the said fact that the the legal heirs of the deceased defendants/ 7th and 12th respondents herein, have not been impleaded.

5. On the limited ground, the application filed by the petitioner is not maintainable, the petitioner has not impleaded the legal heirs of the deceased defendants/ 7th and 12th respondents herein, as parties in

the said application and in the present revision petition. Therefore, the application itself is defective. Hence, the application filed by the petitioner is not maintainable and the same is liable to be dismissed. At this stage, the learned counsel for the petitioner seeks one week time to file a fresh application before the court below, and seeks to dispose the said application in accordance with law. It is further prayed that directions may be given to the trial court to dispose of the suit, within a reasonable time otherwise the respondents would protract the suits, which is of the year 1999 and 2005. The learned counsel for the respondents requested this Court to grant opportunity to the respondents to file counter affidavit if the said application is filed by the petitioner before the court below.

6. Considering the above submissions of the learned counsel for the petitioner and the respondents, this Court is inclined to pass the following order :-

1. Since the application filed by the petitioner itself is defective, the Civil Revision Petition is dismissed as not maintainable. However, liberty is granted to the petitioner to file a fresh application

before the court below, within a period of one week from the date of receipt of a copy of this order.

2. On filing of such application, within the said period, the respondents are permitted to file counter affidavit, within a period of one week, from the date of filing the application.
3. Thereafter, the court below is directed to dispose of the said application, within a period of two weeks, thereafter.

7. The Civil Revision Petition is disposed of, with the above directions. Consequently, the connected Miscellaneous Petition is closed. No costs.

05.03.2018

Index : Yes/ No

Speaking order/ Non speaking order

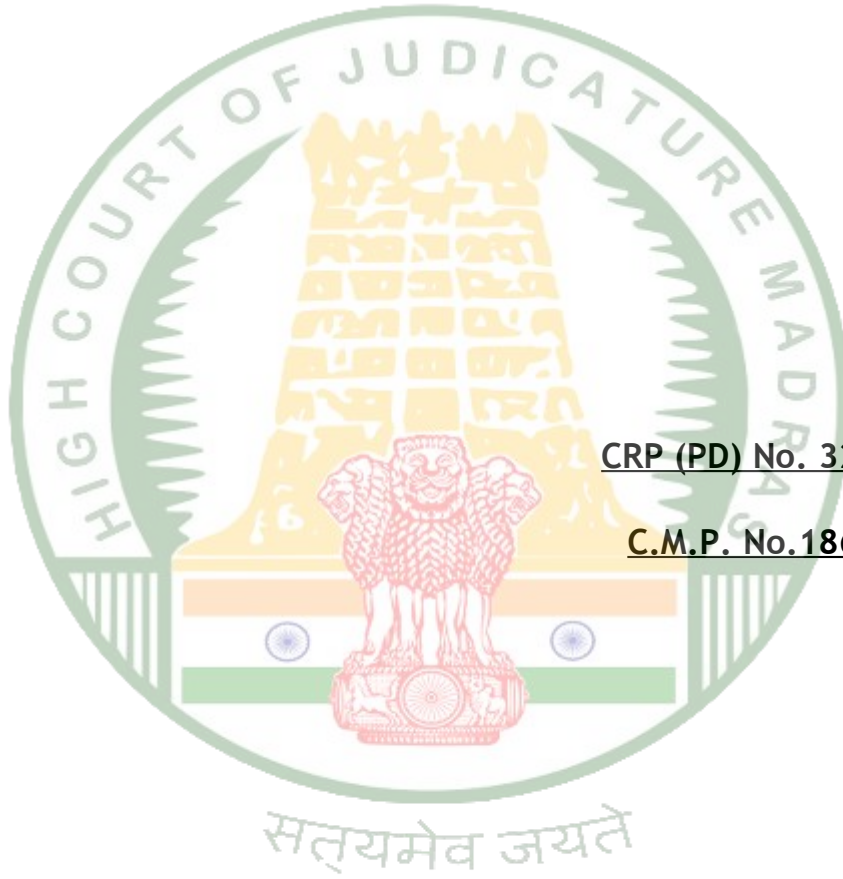
[Issue order copy on 08.03.2018]

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To
The Principal Subordinate Court,
Erode.

D. KRISHNAKUMAR J.,

avr



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