

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2018

CORAM :

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

C.R.P.(NPD).No.4870 of 2011

and

M.P.No.1 of 2011

Dhanapal

... Petitioner

Vs

Muthu Maran

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the Fair and Decreetal Order of the Subordinate Judge Court at Harur, dated 27.07.2011 in C.M.A.No.8 of 2011 reversing the Fair and Decreetal Order of the District Munsif Court at Harur, dated 08.02.2011 in I.A.No.1085 of 2010 in O.S.No.309 of 2006.

For Petitioner : Mr.R.Venkata Varathan
For Respondent : Mr.P.A.Sudesh Kumar

ORDER

The petitioner herein is the defendant in O.S.No.309 of 2006 on the file of the District Munsif Court, Harur, which the respondent herein has filed the suit for partition. Initially the suit was dismissed for default for non-appearance of the respondent on 14.12.2009. The respondent had then filed I.A.No.69 of 2010 and had the suit restored to file. The suit was again listed for trial on 04.10.2010 and yet again, the respondent did not appear and

consequently the suit was dismissed for default on 04.10.2010. The respondent would then prefer I.A.No.1085 of 2010 for restoration, and the same was dismissed by the trial Court. Thereafter, the respondent preferred an appeal in C.M.A.No.8 of 2011 before the Sub Court, Harur, and the Appellate Court vide its order dated 27.07.2011 had allowed the appeal and restored the suit to file on the condition that the respondent should pay a sum of Rs.1,000/- within 29.07.2011 and with a further condition that the trial Court shall dispose of the suit within four months from the date of receipt of the order copy.

2. The learned counsel for the petitioner would argue that the plaintiff/respondent had made it a habit to let the suit dismissed for default and his attitude does not merit sympathy. His proneness to default is rooted deep in his attitude that he has not chosen not to comply with the condition imposed by the Court below before 29.07.2011.

3. Heard Mr.P.Valliappan and Ms.B.Shivani, learned counsel for the petitioner and Mr.J.Hariharan, learned counsel appearing on behalf of Mr.V.Nicholas for the respondent.

4.1 The suit is for partition and a defence in the case is that there was an oral partition that had taken place between the parties. *Prima-facie* what is not in dispute that the parties have been co-sharers and what is now in

dispute is whether the oral partition stated by the defendant/revision petitioner as defence is believable. This is a defence which will impact the substantial property-right of the plaintiff. This apart, right to partition has recurring cause of action, and therefore, the right to sue that inheres in the plaintiff will hardly be in threat by an adverse outcome of the present petition against the petitioner. Hence, the opportunity granted to the respondent as has been rightly done by the Sub-Court in C.M.A.No.8 of 2011 cannot be faulted.

4.2 So far as the payment of cost is concerned, the learned counsel for the respondent submitted that the cost was offered by the petitioner but the respondent refused the same and consequently it was deposited into Court. The said statement is recorded.

5. In this circumstance, this Court does not find any merit in the revision petition and the same is dismissed accordingly. Since the suit is pending from 2006, the trial court is required to expedite the matter and both sides are required to extend utmost cooperation and the Court is required to be parsimonious in granting adjournment unless the same becomes imminent. No costs. Consequently, connected miscellaneous petition is closed.

05.04.2018

Index:Yes/No

ssn

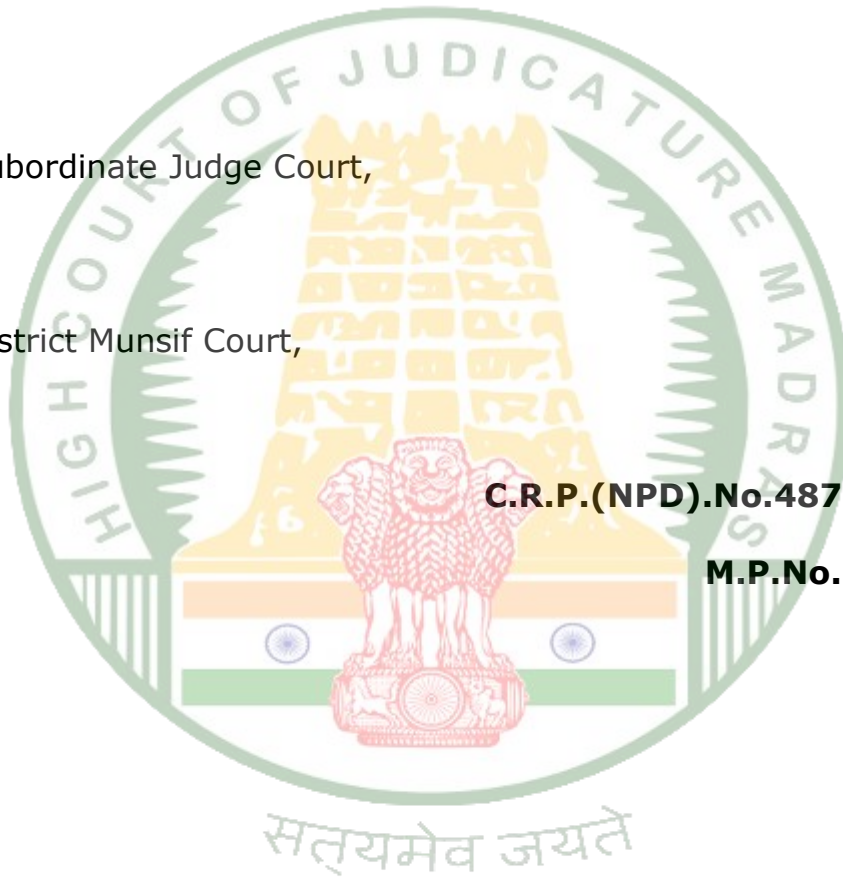
N.SESHASAYEE, J.,
ssn

To

1.The Subordinate Judge Court,
Harur.

2.The District Munsif Court,
Harur.

C.R.P.(NPD).No.4870 of 2011
and
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