

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP(PD).No.508 of 2018
and
C.M.P.No.2615 of 2018

1.Durai
 2.Natarajan
 3.Selvam

... Petitioners

Vs.

1.Pattammal
 2.Alamelu
 3.Rajeshwari
 4.Ellammal
 5.Gopalakrishnan
 6.Dhanalakshmi

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the Order and Decree dated 13.10.2017 made in I.A.No.293 of 2017 in I.A.No.357 of 2012 in O.S.No.88 of 2010 on the file of Subordinate Court, Ponneri.

For Petitioners : Mr.R.Sellapandian for
 K.venkatasubbaraju

For R1 to R3 : Mr.K.Krishnaswamy

For R4 to R6 : No appearance

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ORDER

This Civil Revision Petition has been filed to set aside the Order and Decree dated 13.10.2017 made in I.A.No.293 of 2017 in I.A.No.357 of 2012 in O.S.No.88 of 2010 on the file of Subordinate Court, Ponneri.

2.The respondents 1 to 3 herein filed the suit in O.S.No.88 of 2010 for partition. The petitioners have filed a petition to receive reply statement which was numbered in I.A.No.357 of 2012 and the said application was allowed, as counter not filed. Thereafter, the petitioners filed an Interlocutory Application in I.A.No.293 of 2017 to set aside the order passed in I.A.No.357 of 2012 dated 05.12.2012.

3.The respondents filed the counter statement by stating that the Interlocutory Application in I.A.No.357 of 2012 was allowed and the said case is posted for trial. PW1 was examined on the side of the plaintiffs and thereafter, the petitioners took time for cross-examination. At this stage, the petitioners filed an application to set aside the order passed in I.A.No.357 of 2012. Considering the said contention of both the parties, the application filed by the petitioners was dismissed by the Court below. Challenging the same, the present Civil Revision Petition is filed before this Court.

4.The learned counsel appearing for the respondents would submits that the Court below has considered the above said application by considering the objections raised by the respondents by stating that the instant application is filed by the petitioners at the stage of cross-examination of PW1 and the above said application has been filed belatedly.

5.By considering the aforesaid submission of both the parties and on perusal of the materials on record, this Court finds that the application filed by the petitioners before the Court below in I.A.No.293 of 2017 to set aside the order passed in I.A.No.357 of 2012 in O.S.No.88 of 2010 has been filed after a lapse of five years. Further, the respondents/plaintiffs were examined and posted for the cross-examination of PW1. Therefore, the present Civil Revision Petition is filed in the belated stage by the petitioners. Further, the petitioners had already filed the written statement in the aforesaid suit. The respondents has filed an application to receive the reply statement in the afore said suit. Therefore, there is no *bona fide* reasons stated in the application to set aside the order dated 05.12.2012 and this Court is not inclined to interfere with the order of the Court below and there is no error or illegality in the impugned

order passed by the Court below and the Civil Revision petition is liable to be dismissed.

6.In fine, the order in I.A.No.293 of 2017 in I.A.No.357 of 2012 in O.S.No.88 of 2010 dated 13.10.2017 passed by the learned Subordinate Judge, Ponneri is confirmed and therefore, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

08.03.2018

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Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

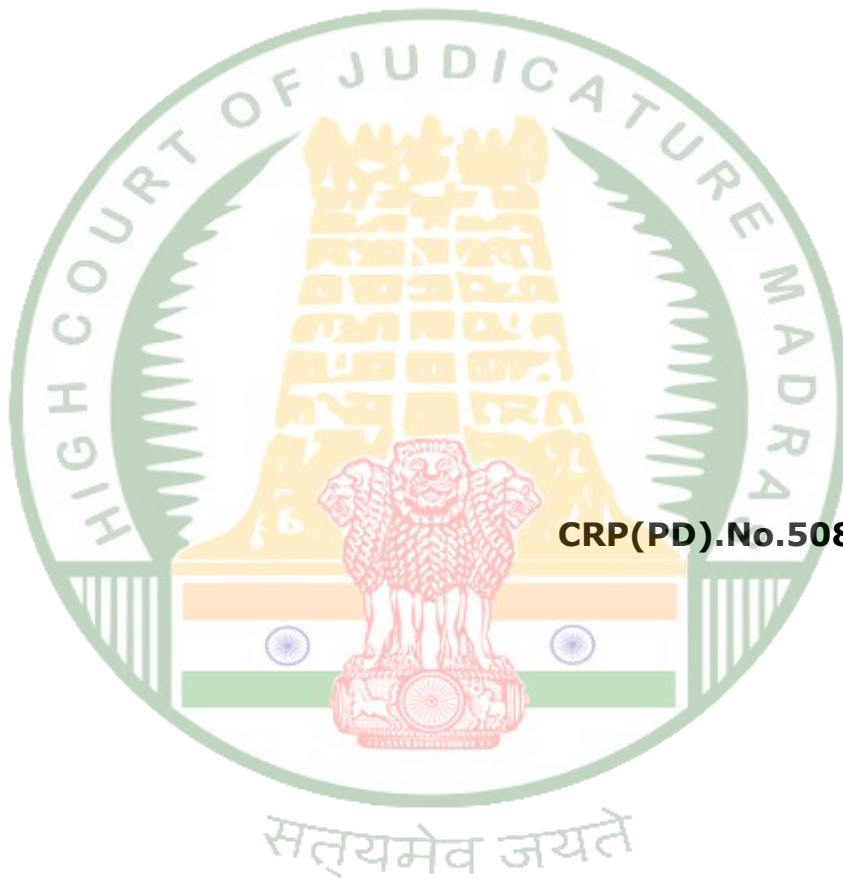
To

The Subordinate Judge,
Ponneri.

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D. KRISHNAKUMAR J.,

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