

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.649 of 2015

1.Viruthambal
2.Babli @ Arunachalam

.. Petitioners

Vs.

1.Mohammed Salia
2.S.K.Jani

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to direct the learned Subordinate Judge, Tiruvannamalai, to take O.S.SR.No.4843 of 2013 on record and number the same as being maintainable before the Subordinate Court, Tiruvannamalai.

For Petitioners : M/S. S.P.Arthi

For Respondents : Mr.G.Rajan

ORDER

The Civil Revision Petition is filed to direct the learned Subordinate Judge, Tiruvannamalai, to take O.S.SR.No.4843 of 2013 on record and number the same as being maintainable before the Subordinate Court, Tiruvannamalai.

2. The petitioner filed plaint in O.S.SR.No.4843 of 2013 for declaration that the first petitioner has absolute title, interest and right over the suit properties and for consequential permanent injunction restraining the respondents from interfering with the petitioners' possession and enjoyment and for declaration that the entire proceedings in O.S.No.16 of 2009 on the file of the District Court, Tiruvannamalai, are fraudulent and null and void and not binding on the petitioners.

3. According to the petitioners, the respondents played fraud on the Court and obtained decree dated 29.04.2009 in O.S.No.16 of 2009. In view of the decree being obtained by playing fraud and the said decree is nullity, it is liable to be set aside and it is not binding on the petitioners. The learned Judge returned the plaint raising a

query with regard to maintainability of the suit before the District Munsif Court, when the decree in O.S.No.16 of 2009 was passed by the District Court, Tiruvannamalai. The petitioners represented the plaint quoting the judgment of the Hon'ble Apex Court reported in ***AIR 1994 SC 853 (S.P.Chengalvaraya Naidu (dead) by legal heirs, v. Jagannath (dead) by legal heirs and others)*** and submitted that a decree of Superior Court can be challenged in the Inferior Court. The learned Judge returned the plaint on various defects including the query as to how the suit is maintainable. Finally, the plaint was returned on 30.10.2013 raising the question of maintainability.

4. Against the said order dated 30.10.2013 made in O.S.SR.No.4843 of 2013, the present Civil Revision Petition is filed by the petitioners.

5. The learned counsel for the petitioners contended that if the Court has pecuniary jurisdiction to entertain the suit, it cannot return the same on extraneous grounds. The decree obtained by the respondents is nullity and it can be challenged in the Inferior Court, even if the decree was passed by the Superior Court. In support of

her contentions, the learned counsel relied on the following judgments:

(i) ***AIR 1994 SC 853 (S.P.Chengalvaraya Naidu (dead) by legal heirs, v. Jagannath (dead) by legal heirs and others;***

(ii) ***(2012) 1 SCC 476 (Union of India and others v. Ramesh Gandhi);***

6. Per contra, the learned counsel for the respondents submitted that decree is not a fraudulent decree. The decree now sought to set aside is passed by the District Court and it cannot be set aside by the District Munsif Court and prayed for dismissal of the revision petition.

7. Heard both sides and perused the materials available on record.

8. The issue whether the decree passed by the Superior Court can be challenged by the Inferior Court is no longer *res integra*. The similar issue has been considered by the Division Bench of this Court in the judgment reported in ***MANU/TN/0190/1917, order dated 28.03.1917 (Arunachellam chetty v. Sabapathy chetty)***

and held that when decree is challenged on the ground of nullity, the suit can be filed in the Inferior Court, even though the decree is passed by the Superior Court. The only consideration for the Court to entertain such suit is whether the said Court has pecuniary and territorial jurisdiction. This issue was also considered by the Hon'ble Apex Court in the judgment reported in **(2007) 4 SCC 221 (A.V.Papayya Sastry and others v. Government of A.P. and others)** and held that the decree can be challenged in the Inferior Court, when challenge is on the ground of fraud and nullity, even though the decree is passed by the Superior Court.

9. Further as per Section 9 C.P.C., the Court has jurisdiction to entertain and decide the suit unless it is specifically barred. Further as per Section 16 C.P.C., the suit has to be entertained at first instance in the Court of lowest grade competent to try it.

10. In the present case, the District Munsif Court has both pecuniary and territorial jurisdiction. In view of the Judgment referred to above as well as Sections 9 and 15 C.P.C., the District Munsif Court, has jurisdiction and power to entertain and decide the suit filed by the petitioners.

11. The petitioners are directed to represent the plaint within three weeks from the date of receipt of a copy of this order. If the petitioners represent the same, the learned Judge is directed to number the suit, if it is otherwise in order without raising the issue of maintainability.

12. With the above direction, the Civil Revision Petition is allowed. No costs.

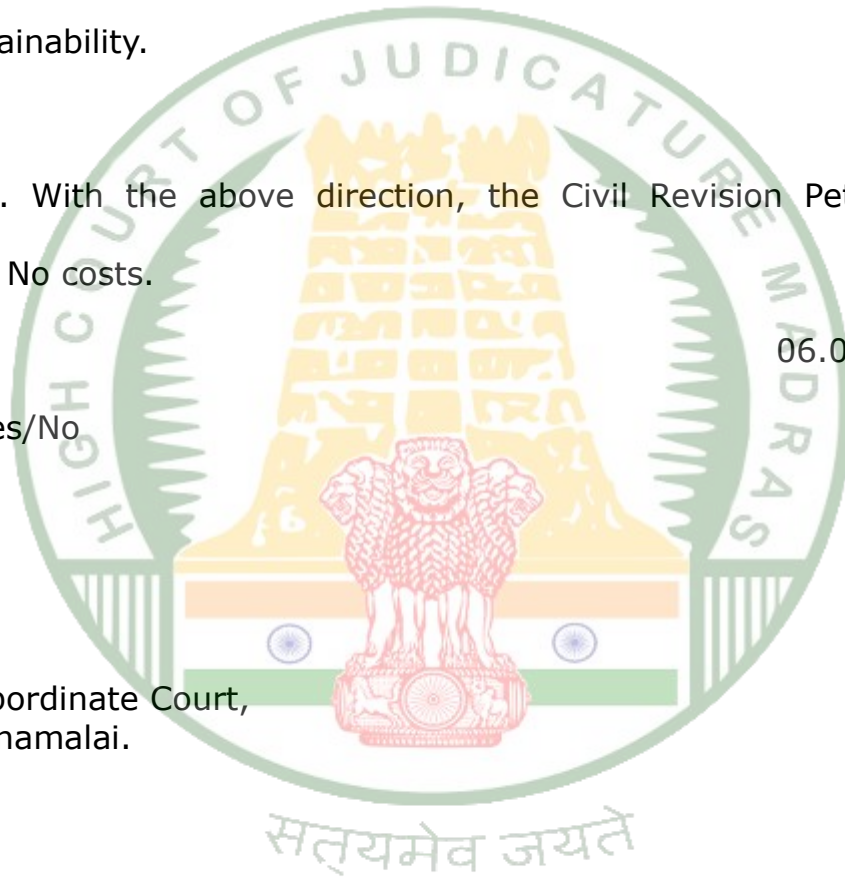
06.02.2018

Index:Yes/No

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To

The Subordinate Court,
Tiruvannamalai.



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V.M.VELUMANI,J.

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