

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2018

CORAM

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.955 to 957 of 2015
& M.P.No.1 of 2015

1.Rukku
2.Nasiyammal

.. Petitioners in all
C.R.Ps.

Vs.

1.K.Sivagnanam
2.Kali
3.Dillirajan
4.Lakshmi
5.Kulandi
6.Alamelu

.. Respondents in all
C.R.Ps.

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and decretal orders dated 07.02.2015 made in I.A.Nos.169 to 171 of 2015 in O.S.No.387 of 2011 on the file of the Principal District Munsif, Thirupattur, Vellore District.

For Petitioners : Mr.T.M.Hariharan

For R1 : Mr.S.Subbiah,
Senior Counsel

For R2 to R6 : Exparte

COMMON ORDER

These Civil Revision Petitions are filed to set aside the fair and decretal orders dated 07.02.2015 made in I.A.Nos.169 to 171 of 2015 in O.S.No.387 of 2011 on the file of the Principal District Munsif, Thirupattur, Vellore District.

2.The parties and the issues involved in all the Civil Revision Petitions are one and the same. Therefore, disposed of by this common order.

3.The petitioners are the defendants 3 and 4, first respondent is the plaintiff and respondents 2 to 6 are the defendants 2 and 5 to 8 in O.S.No.387 of 2011 on the file of the Principal District Munsif, Thirupattur, Vellore District. Originally, the first respondent filed the said suit against one Nachiammal since deceased and respondents 2, 3 and petitioners for declaration that settlement deed dated 20.02.2008 executed by the deceased Nachiammal and second respondent in favour of the petitioners and sale deed dated 16.09.2009 executed by the deceased Nachiammal, second respondent and petitioners through their Power of Attorney to the third respondent as null and void and for

permanent injunction restraining the petitioners, deceased Nachiammal and respondents 2 to 6 from interfering with his peaceful possession and enjoyment of the suit property. The petitioners filed written statement on 29.04.2013 and are contesting the suit. The parties led in evidence and closed their side. When the suit is posted for arguments, the first respondent filed three applications viz., I.A.Nos.169 to 171 of 2015 under Section 151 of C.P.C to reopen the case, recall the deposition of second respondent and to receive additional documents in O.S.No.86 of 2009. According to the first respondent, the second respondent herein, in the earlier suit O.S.No.86 of 2009 has deposed as D.W.3 and admitted that suit property was already sold to Rajammal, mother of the first respondent by sale deed dated 27.11.1968. The second respondent is the second defendant in the present suit and remained exparte in the present suit. The petitioners who claimed title through the second respondent have failed to examine the second respondent/second defendant to substantiate their claim. According to the first respondent, had second respondent being examined, he should have cross examined second respondent with regard to his admission of sale in favour of the first respondent's mother. In the circumstances, the first respondent has filed the above three applications for the relief stated above.

4.The petitioners filed separate counter affidavit in all the three applications and opposed the same. According to the petitioners, their father, the second respondent is alive and when a person is alive, his deposition in earlier proceedings cannot be marked. The first respondent is not a party to the earlier suit and for that reason also he cannot mark the said deposition and prayed for dismissal of all the three applications.

5.The learned Judge, considering the averments in the affidavits, counter affidavits and materials on record, allowed all the three applications on the ground that the petitioners ought to have examined the second respondent to give evidence and the petitioners can raise their objection with regard to the admissibility of the document at the time of marking of the same.

6.Against the said order of dismissal dated 07.02.2015 made in I.A.No.169 of 2015 in O.S.No.387 of 2011, the petitioners have come out with the present three Civil Revision Petitions.

7.Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record and the

judgment relied on by the learned counsel for the respondents.

8.The first respondent is seeking to mark the deposition of the second respondent deposed in another suit, O.S.No.86 of 2009. The second respondent is alive and he remained exparte in the suit and has not come to the witness box to give evidence. In view of the fact that second respondent is alive, his deposition in the earlier suit cannot be marked in the present suit. In such circumstances, the only way open to the first respondent is to insist the Court to take adverse inference for non examination of the first respondent. Further, the first respondent has already filed sale deed executed in favour of his mother Rajammal, the first defendant by Kali, the second respondent and one Krishnan. In view of the above facts, the learned Judge without considering all the above facts erred in allowing these applications. For the above reason, the order of the leaned Judge dated 07.02.2015 made in I.A.Nos.169 to 171 of 2015 in O.S.No.387 of 2011 is liable to be set aside and is hereby set aside.

WEB COPY

9. Accordingly all the three applications are dismissed and these Civil Revision Petitions are allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

24.01.2018

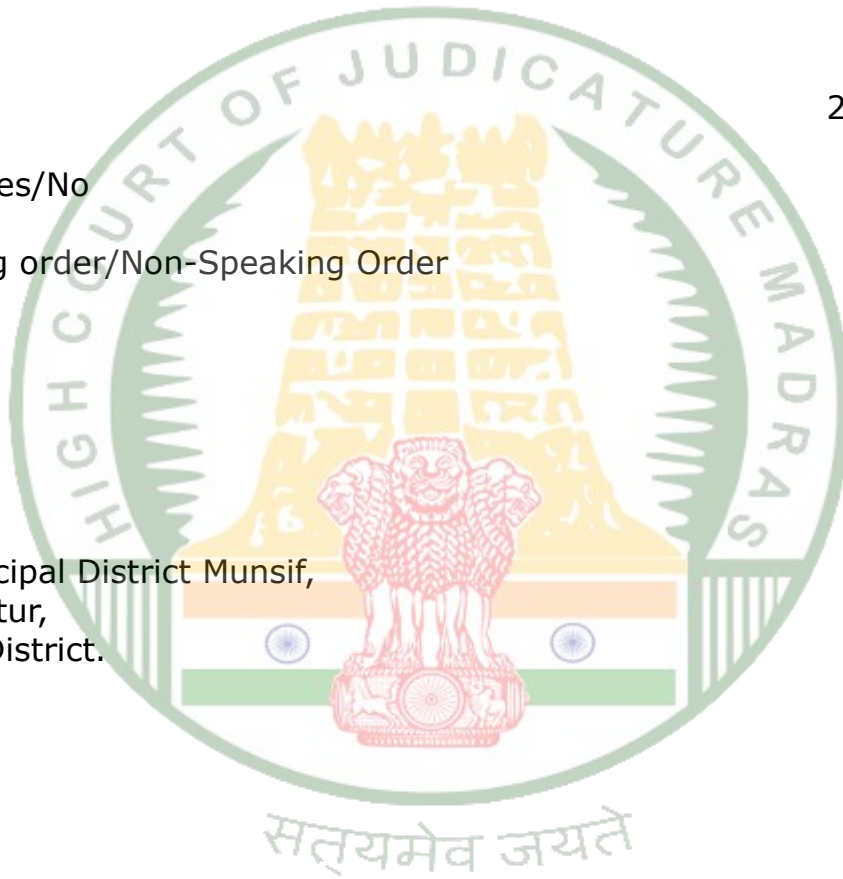
Index: Yes/No

Speaking order/Non-Speaking Order

gsa

To

The Principal District Munsif,
Thirupattur,
Vellore District.



WEB COPY

V.M.VELUMANI,J.

gsa



C.R.P.(PD)Nos.955 to 957 of 2015
& M.P.No.1 of 2015

WEB COPY

24.01.2018