

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.03.2018

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

CIVIL REVISION PETITION (NPD) No.988 of 2018
and C.M.P.No.5298 of 2018

1.Malathy

2.Murali

.. Petitioners

vs

1.Sagadevan

2.Malleswari

3.Minor Janani
Rep. by her Guardian-Father
Muthukrishnan

4.Muthukrishnan

.. Respondents

The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order dated 10.01.2018 passed in I.A.No.198 of 2017 in A.S.No.12 of 2005 on the file of the Subordinate Judge, Madurantakam is unjust, illegal, unsound and in any event the same shall liable to be set aside.

For Petitioners

... Mr.D.Kulasekaran

For Respondents

... Mr.S.Sathish

ORDER

By consent of the learned counsel for both sides, the Civil Revision Petition is taken up for final disposal at the admission stage.

2.The Civil Revision Petition has been filed to set aside the fair and final order dated 10.01.2018 passed in I.A.No.198 of 2017 in A.S.No.12 of 2005 on the file of the learned Subordinate Judge, Madurantakam.

3.According to the petitioners, one Rajamani/plaintiff filed a suit in O.S.No.404 of 1997 against the respondents 1 and 2 and one Sathyapriya seeking to execute a sale deed in respect of half share in the suit property on the file of the District Munsif, Maduranthakam and the same was decreed on 10.01.2005 directing the plaintiff to deposit a sum of Rs.29,000/- before the Court below and thereafter, the defendants shall execute a sale deed in respect of half share of the plaintiff in the suit property. As against the said judgment, the first respondent/third defendant filed A.S.No.12 of 2005 on the file of the Subordinate Judge, Madurantakam and the said appeal was allowed by the judgment dated 16.10.2016. Aggrieved by the judgment dated

16.10.2006 passed in A.S.No.12 of 2005, the appellant/plaintiff filed C.M.A.No.182 of 2007 before this Court. This Court, by judgment dated 02.09.2010, set aside the judgment and decree dated 16.10.2016 passed in A.S.No.12 of 2005 and remanded the matter to the first appellate Court for disposal on merits and in accordance with law after giving sufficient opportunity to both sides. Hence, the petitioners, filed I.A.No.198 of 2017 in A.S.No.12 of 2005, under Order 6 Rule 17 of CPC to amend the plaint and the said application was dismissed by order dated 10.01.2018 stating that there is a direction in the suit to the defendants to execute a sale deed in respect of 1/2 share in the suit property in favour of the plaintiff and the petitioners had also already undertaken to pay the value of 1/2 share in the suit property and therefore, no prejudice would be caused to the petitioners if they are permitted to make amendment in the plaint.

4. When the matter was taken up for hearing, the learned counsel for the first respondent submitted that the respondents have undertaken that they will deposit the amount of Rs.50,000/- as sought for to the credit of the suit in O.S.No.404 of 1997 on the file of the District Munsif, Maduranthakam without prejudiced his rights. The learned counsel further submitted that in the event of the appeal suit

is dismissed by the appellate Court, subject to filing of Second Appeal, the respondents have no objection to withdraw the amount by the petitioners, as stated in the undertaking affidavit dated 16.03.2018.

Considering the facts of the case and submission made by the learned counsel for the respondent, this Court is inclined to pass the following order:

(i) The submission and the affidavit of undertaking dated 16.03.2108 filed by the learned counsel for the first respondent are recorded.

(ii) The respondents are directed to deposit the amount of Rs.50,000/- as stated in the affidavit to the credit of O.S.No.404 of 1997 on the file of the District Munsif, Madurantakam.

(iii) Without prejudice to right of the parties, withdrawal of the amount by the

petitioners, is subject to the outcome of the appeal suit and filing of the second appeal.

(iv)The Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

16.03.2018

Speaking/Non Speaking order.
Index: Yes/No.
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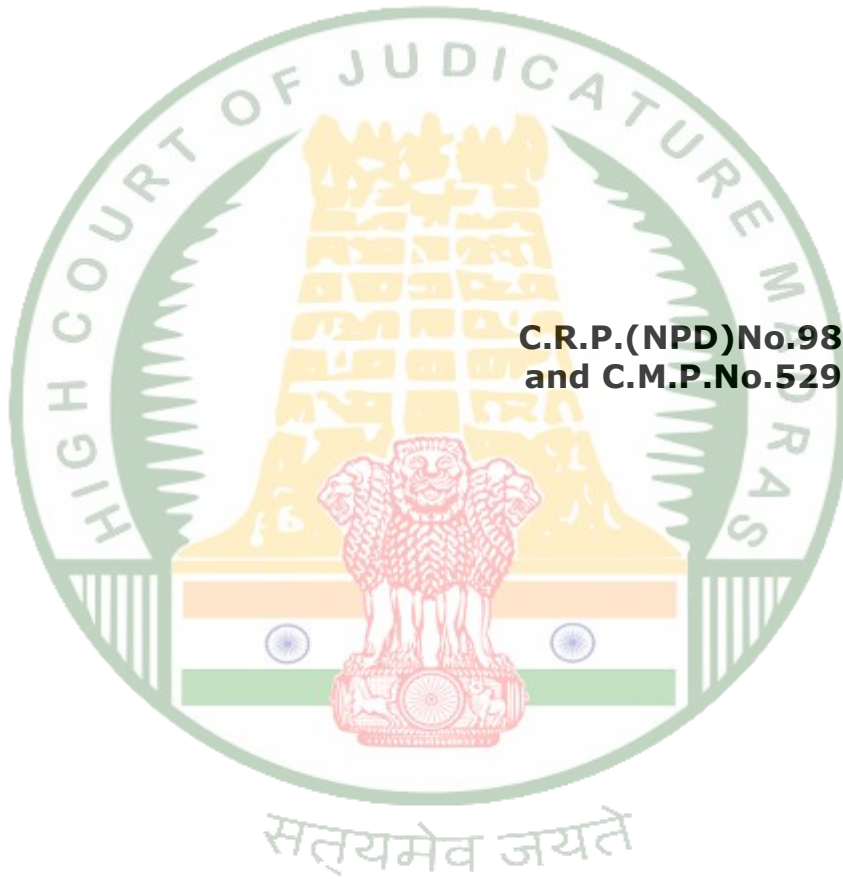
Note to Office
Issue order copy on 27.03.2018

To
The Subordinate Judge,
Madurantakam.

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D.KRISHNAKUMAR,J.
cla



**C.R.P.(NPD)No.988 of 2018
and C.M.P.No.5298 of 2018**

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Date: 16.03.2018