

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.02.2018

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CIVIL REVISION PETITION(PD) No.2317 of 2016
and C.M.P.No.11971 of 2016

Venkataraman

.. Petitioner

vs

Chinnasamy

.. Respondent

The Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 11.04.2016 passed in I.A.No.80 of 2016 in O.S.No.5 of 2011 pending on the file of the Subordinate Judge, Krishnagiri.

For Petitioner

... Mr.Mukunth

For Respondent

... Mrs.Selvi George

ORDER

The Civil Revision Petition has been filed against the fair and decretal order dated 11.04.2016 passed in I.A.No.80 of 2016 in O.S.No.5 of 2011 pending on the file of the learned Subordinate Judge, Krishnagiri.

2.The brief facts of the case are as follows:

The respondent/plaintiff filed a suit in O.S.No.5 of 2011 against the defendants under Order VII Rule 1 to 6 and Section 26 of CPC on the file of the learned Subordinate Judge, Krishnagiri seeking partition and other reliefs. In the aforesaid suit, the petitioner/2nd defendant filed I.A.No.80 of 2016 under Order VIII Rule 9 and Section 151 of CPC to grant leave to file an additional written statement and the said application was dismissed by the Court below. Therefore, the present Civil Revision Petition has been filed by the petitioner.

3.The learned counsel for the petitioner submitted that one Kanagaraj/first defendant has executed a registered release deed dated 07.11.2013 in favour of the petitioner in Document No.1150/2014 of SRO, Pochampalli and on execution of the release deed, the first defendant released his common half share in the suit property. In view of the collusive attitude of the first defendant and the execution of the release deed dated 07.11.2013, it is necessary to file an additional written statement. Hence, the above application has been filed seeking leave to file the additional written statement for marking of the above said document. It is true that the said

application has been filed by the petitioner after the evidence was concluded. But, the Court below, without considering the facts and circumstances of the case, erroneously dismissed the said application. The learned counsel further submitted that no prejudice would be caused to the respondent, if the application is allowed. Hence, the impugned order passed by the Court below is liable to be set aside.

4.Per contra, the learned counsel for the respondent submitted that the petitioner has not chosen to file the said application at the pre trial stage and he filed the instant application belatedly, i.e. after the trial and evidence were completed. Therefore, the order passed by the Court below is perfectly valid and hence, the civil revision petition is liable to be dismissed.

5.This Court considered rival submissions made by the learned counsel for both sides and perused the materials available on record.

6.It is an admitted fact that the petitioner filed the application seeking to file the additional written statement and mark the documents after evidence of both sides was concluded and posted for arguments and the suit has been filed for partition and other relief

against the petitioner. But, the learned counsel for the respondent objected to mark the documents.

7.Considering the facts and circumstances of the case and submissions made by the learned counsel for both sides and considering the fact that the suit is of the year 2009, this Court has no hesitation to set aside the impugned order passed by the Court below and inclines to pass the following order:

"(i)The order dated 11.04.2016 passed in I.A.No.80 of 2016 in O.S.No.5 of 2011 on the file of the learned Subordinate Judge, Krishnagiri is set aside.

(ii)The petitioner is directed to file an appropriate application before the Court below within a period of one week from the date of receipt of a copy of this order and to mark the document.

(iii)In the event of filing such application, the respondent is at liberty to raise all his objections

at the time of marking of the document and cross examination of the petitioner before the Court below.

(iv)The trial Court is directed to dispose of the suit in O.S.No.5 of 2011 pending on the file of the learned Subordinate Judge, Krishnagiri as expeditiously as possible preferably on or before 30.04.2018.

(v)Both parties are directed to co-operate to dispose of the suit without getting any adjournments.

(vi)The Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed."

21.02.2018

Speaking/Non Speaking order

Index: Yes/No.

cla

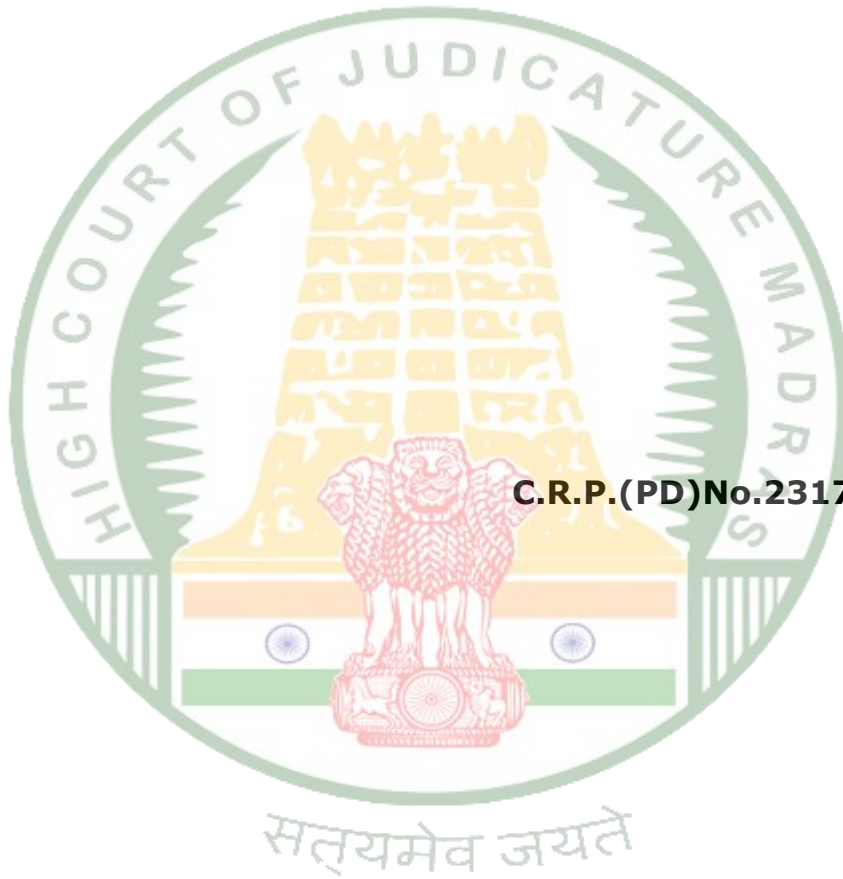
To

The Subordinate Judge,
Krishnagiri.

WEB COPY

D.KRISHNAKUMAR,J.

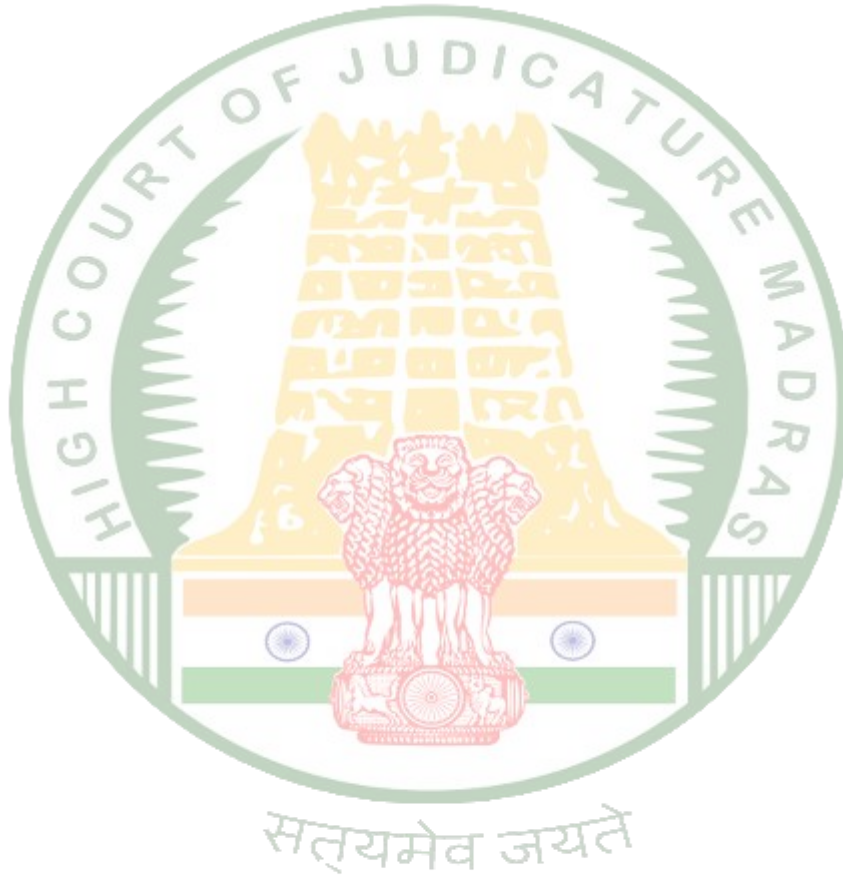
cla



C.R.P.(PD)No.2317 of 2016

WEB COPY

Date: 21.02.2018



WEB COPY