

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.04.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

**C.R.P(NPD)No.2238 of 2012
and
M.P.No.1 of 2012**

A.V.Subramanian

...Petitioner

Versus

1. K.Shenbagam
2. K.Karthi
3. Thiruvmalmurugan
4. R.Kesavalu
5. K.Vaideeswari
6. K.Durgadevi

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 28.10.2011 made in I.A.No.8 of 2011 in O.S.No.39 of 2004 on the file of the Court of the Additional District Judge at Krishnagiri.

For Petitioner : Mr.M.V.Krishnan

For Respondents : Mr.P.Valliappan

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ORDER

1. A suit is laid for partition and was dismissed for default for not taking process for defendants 1 to 3. The suit was sought to be restored with an application to condone the delay of 2,333 days. This Petition was allowed on payment of cost of Rs.700/- to be paid to the defendants nos.1, 2 & 3. The revision petitioner herein is the fourth defendant in the suit and he had entered into an agreement of sale with the first respondent.

2. The learned counsel for the petitioner submitted that the fourth defendant has since filed a suit for specific performance against the first defendant and the same has been decreed. The suit for partition is set up by first defendant through his children, to delay the performance of his part of the contract.

3. *Per contra*, the learned counsel for the respondents would submit that the cause of action for the partition is recurring and will survive even if the petition for restoration is dismissed. In other words, notwithstanding the dismissal of the present suit for default, the respondents would still have a cause of action for filing a fresh suit for partition. While not taking steps against the defendants 1 to 3 could have been avoided, still it cannot be stretched to affect, what essentially in law is a recurring cause of action, argued the counsel.

4. After hearing rival side and appreciating a law on the specific point and perusing the orders, this Court only decides to modify the order as to the payment of cost, but does not find a need to interfere with remaining part of the impugned order of the trial Court. Therefore, this Court partially allowed this Petition only to the extent of modifying the cost of Rs.700/- to Rs.5,000/-. The said cost is also paid instantly by the counsel for the respondent before the Court now. As to the rest, the order passed in I.A.No.8 of 2011 in O.S.No.39 of 2004 on the file of the Court of the

Additional District Judge at Krishnagiri is confirmed. The Trial Court is directed to list the case for trial and dispose of the suit as expeditiously as

possible. No costs. Consequently, connected Miscellaneous Petition is closed.

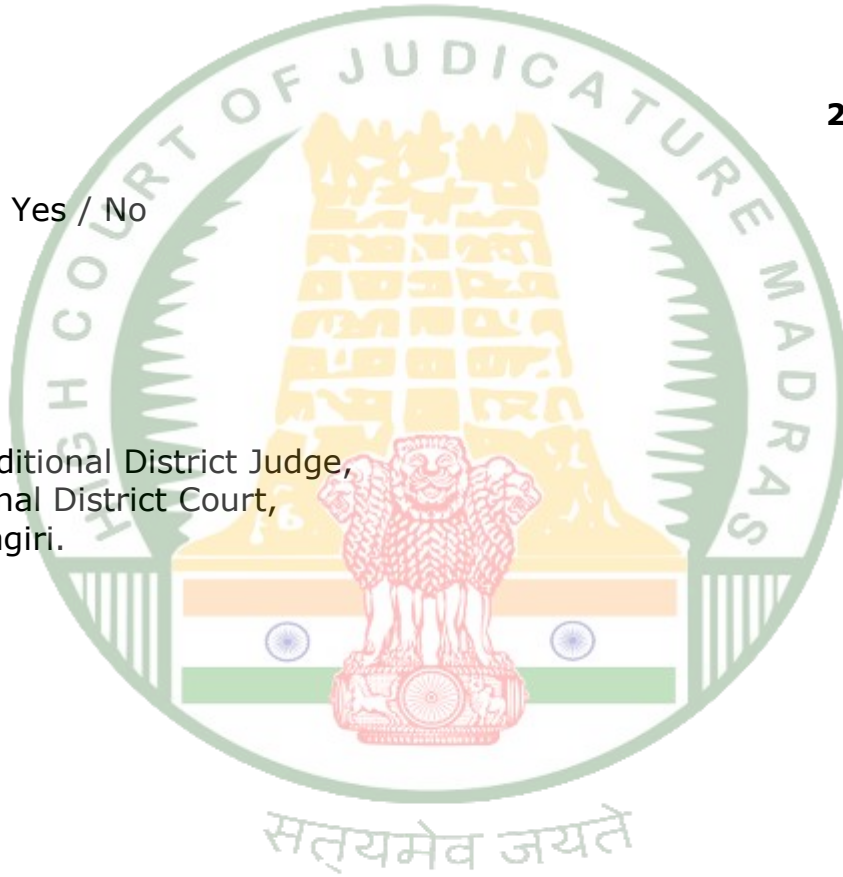
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Index : Yes / No

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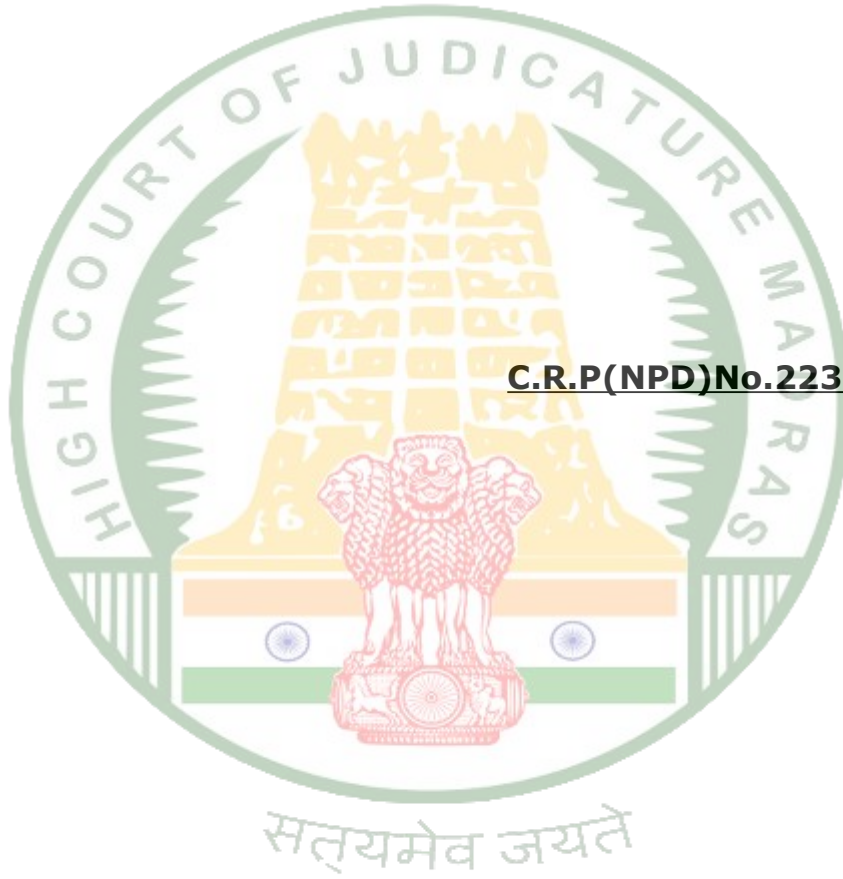
The Additional District Judge,
Additional District Court,
Krishnagiri.



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N. SESHASAYEE, J.,

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