

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP(NPD).No.2675 of 2011 and
M.P.No.1 of 2011

Vairam @ Sumathi

... Petitioner

Vs.

1. Kumaran
2. Thilagadevi
3. Ekambaram
4. Manogaran
5. Deenadayalan
6. Nainathai Mudaliar

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the orders dated 02.06.2011 passed in E.A.No.4 of 2010 in E.P.No.54 of 2008 in O.S.No.77 of 2004 by the District Judge, Tiruvannamalai.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr. I.Abrun Mohammed (for R1 and R2)

No appearance for R3 to R6

ORDER

The Civil Revision Petitioner is the 5th defendant in O.S.No.77 of 2004 on the file of the District Judge, Tiruvannamalai. The respondents 1 and 2 filed the said suit for specific performance of contract between them and the respondents 3 and 4 or in the alternative for refund of the advance amount of Rs.5,00,000/-. The suit was decreed directing to the respondents 3 and 4 to pay the advance amount of Rs.5,00,000/- to the respondents 1 and 2. In order to execute the said decree, the respondents 1 and 2/plaintiffs filed E.P.No.54 of 2008 in O.S.No.77 of 2004 for attachment and sale of the property mentioned in the execution proceedings. Pending the execution proceedings, the present revision petitioner/ 5th defendant filed E.A.No.4 of 2010 under Section 47 of the Code of Civil Procedure to declare that the decree passed in O.S.No.77/2004 cannot be executed until the final decree passed in O.S.No.76/2004 on the file of the District Judge, Tiruvannamalai.

2. The learned counsel appearing for the civil revision petitioner would contend that the revision petitioner filed O.S.No.76 of 2004 for partition and separate possession of her 1/5th share in the suit properties

and that till the final decree is passed in the said suit, the decree passed in O.S.No.77 of 2004 cannot be executed. He would therefore contend that the orders dated 02.06.2011 passed by the learned District Judge, Tiruvannamalai in E.P.No.54 of 2008 in E.A.No.4 of 2010 under Section 47 of the Code of Civil Procedure is liable to be set aside.

3. The learned counsel appearing for the respondents 1 and 2 would contend that the petitioner is the 5th defendant in the said suit in O.S.No.77 of 2004 on the file of the District Judge, Tiruvannamalai and therefore, the decree passed in O.S.No.77 of 2004 would also bind her and she cannot file a petition under Section 47 of the Code of Civil Procedure Code praying to declare that the decree passed in O.S.No.77 of 2004 is not executable.

4. A perusal of the records shows that a decree in O.S.No.77 of 2004 has been passed by the learned District Judge, Tiruvannamalai for refund of Rs.5,00,000/- together with interest, being the advance amounts paid by the respondents 1 and 2 to the respondents 3 and 4. In order to execute the said decree, the respondents 1 and 2 filed E.P.No.54 of 2008 and in the said application, the present revision petitioner, who is the 5th

defendant in O.S.No.77 of 2004 filed E.A.No.4 of 2010, stating that the decree in O.S.No.77 of 2004 cannot be executed, till passing of final decree in O.S.No.76 of 2004, which was filed by her for partition of the suit property into 5 equal shares and to allot one such share to her. The said suit in O.S.No.76 of 2004 was filed before the District Judge, Tiruvannamalai.

5. It is seen from the copy of the decree passed in O.S.No.77 of 2004 that the suit was dismissed as against the present revision petitioner. However, the said suit was decreed as against the respondents 3 and 4 and no appeal was filed against the decree passed in O.S.No.77 of 2004. In such circumstances, the execution of the decree cannot be declared as inexecutable, till the passing of final decree in O.S.No.76 of 2004. If at all the revision petitioner is deprived of her rights, she must seek her remedy against the respondents 3 and 4 and not by filing a petition under Section 47 of the Code of Civil Procedure and that too in the execution petition filed by the plaintiff in O.S.No.77 of 2004. Therefore, the orders passed by the District Judge, Tiruvannamalai are well founded and I do not see any reason to interfere with the findings recorded by him.

6. In the result, the civil revision petition is dismissed. No costs.
The connected miscellaneous petition is dismissed. The orders passed in
E.A.No.4 of 2010 in E.P.No.54 of 2008 in O.S.No.77 of 2004 by the District
Judge, Tiruvannamalai is upheld.

02.07.2019

mst

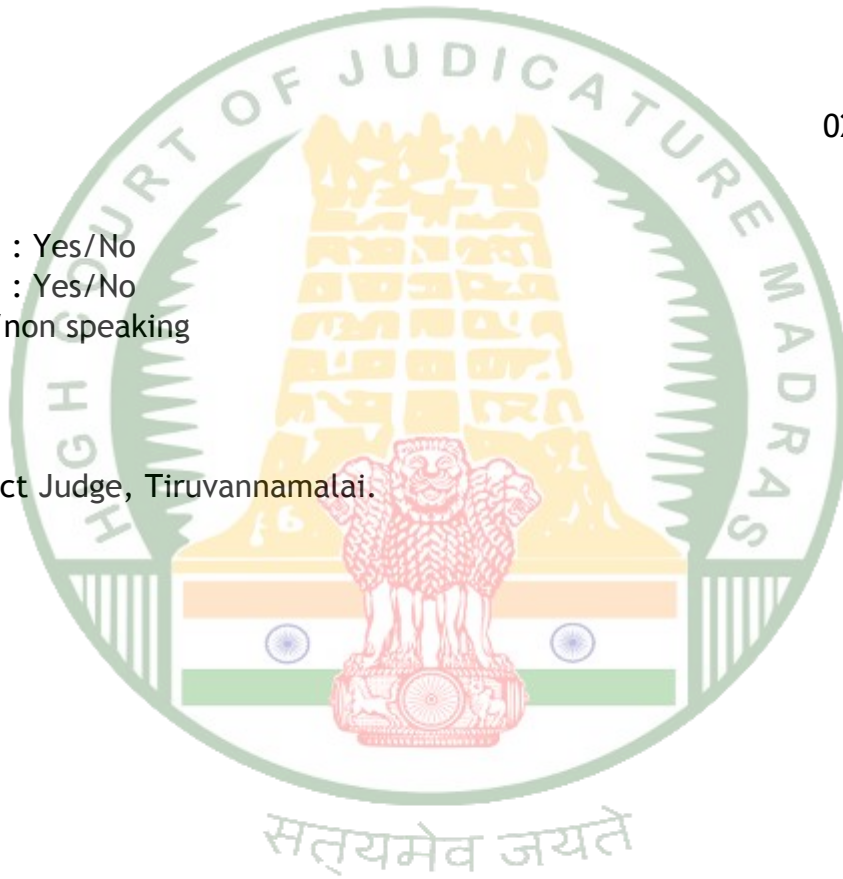
Index : Yes/No

Internet : Yes/No

Speaking/non speaking

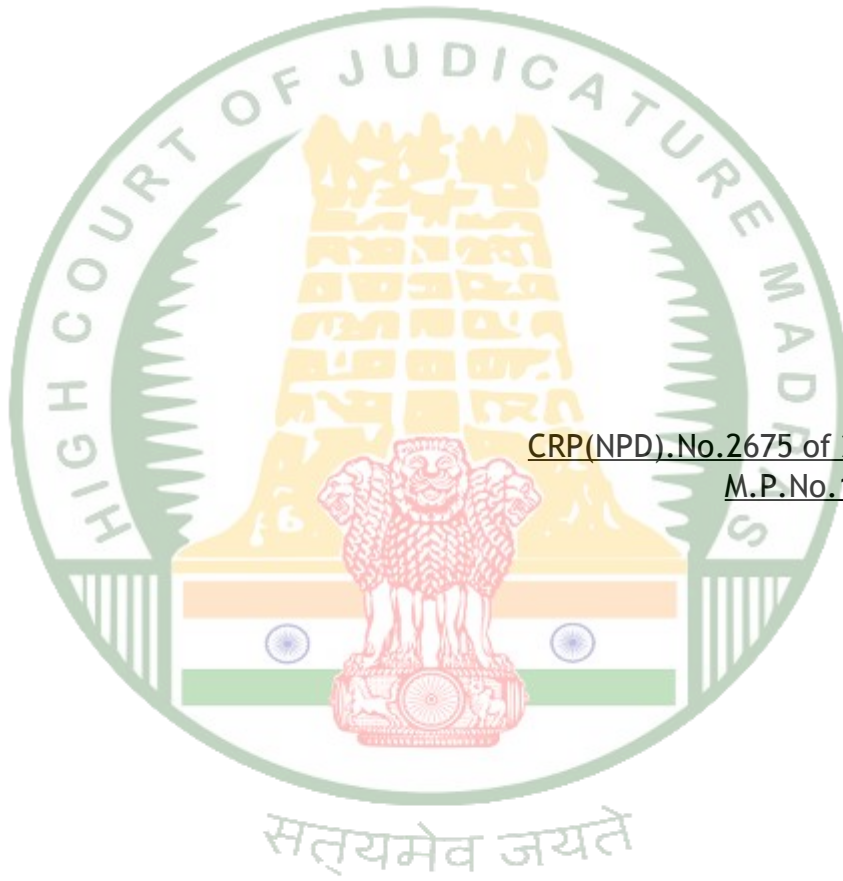
To

The District Judge, Tiruvannamalai.



WEB COPY

R.HEMALATHA, J.,
mst



CRP(NPD).No.2675 of 2011 and
M.P.No.1 of 2011

WEB COPY

02.07.2019