

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2019

CORAM :

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR

C.R.P. (NPD) No.541 of 2011

1.Thirumalai @ Ponnusamy
2.Natarajan

... Revision Petitioners

Vs.

1.S.Kumarasamy (Deceased)
2.Nachimuthu @ Paraimani
3.Family Manager Murugesan
4.Family Manager Sankar
5.Kannayal
6.Shanthi

... Respondents

[Respondents 3 and 4 are given up.

RR 5 & 6 brought on record as LRs of the deceased
R1 vide order of Court dated 30.01.2017 made in
M.P.Nos.1 & 2 of 2014 in CRP No.541 of 2011]

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the order dated 30.10.2010 made in E.P.No.7 of 2001 in O.S.No.1086 of 1996 on the file of the First Additional District Munsif Court, Erode by allowing this Civil Revision Petition.

For Petitioners : Mr.N.Manokaran

For Respondents

R1 : Died (Steps taken)

R3 & R4 : Given up

R2, R5 & R6 : No appearance

ORDER

The present revision petition has been filed against the order of the Execution Court made in E.P.No.7 of 2001 in O.S.No.1086 of 1996, dismissing the Execution Petition.

2.The suit in O.S.No.1086 of 1996 has been originally decreed for mandatory injunction and for removal of mud and stones by the defendant from the suit property. When an application was filed for execution of the above decree, the Execution Court dismissed the application on the ground made in the counter that the Judgment Debtor has admitted that he had already removed the mud and stones from the suit property. Taking note of the above, the Execution Petition itself was dismissed.

3.Heard the learned counsel for the revision petitioners.

4.The trial Court was swayed away by the admission of P.W.1 with regard to removal of mud and stones and has dismissed the Execution Petition, but, whether the removal is in terms of the decree or not, ought to have been seen by the Court below, by appointing an Advocate Commissioner.

5.Hence, this Court is of the view that the order of the Execution Court, dismissing the Execution Petition in entirety, is liable to be interfered with and is accordingly, set aside. The Execution Court is directed to appoint an Advocate Commissioner and check whether the mud and stones are entirely removed from the suit property in terms of the decree.

6.With the above direction, this Civil Revision Petition is allowed.

No costs.

mkn

Index : Yes / No

Internet : Yes / No

Speaking order / Nonspeaking order

To

The I Additional District Munsif,
Erode.

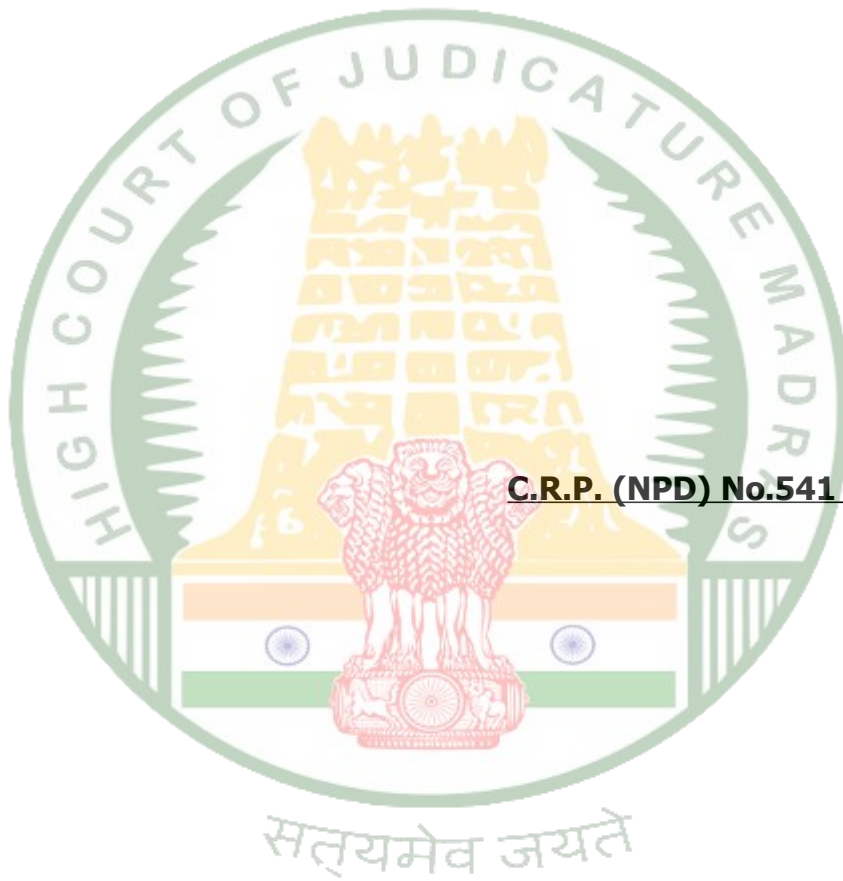
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N. SATHISH KUMAR, J.

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