

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2019

CORAM :

THE HON'BLE MR. JUSTICE M. DURAISWAMY

C.R.P. (NPD) No.3023 of 2012

Unnamalai

... Revision Petitioner

Vs.

1.Theerthagiri
2.Chinnapillai
3.Elatchumanan
4.Theerthagiri
5.Kollanthai
6.Pallani

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decretal order dated 13.10.2009 passed in R.E.P. No.21 of 2008 in O.S.No.366 of 2002 on the file of the District Munsif Court, Harur.

For Petitioner : Ms.C.Sriranjani

For Respondents : No appearance

ORDER

Challenging the order passed in R.E.P. No.21 of 2008 on the file of the District Munsif Court, Harur, the Decree Holder has filed the above Civil Revision Petition.

2.The petitioner filed a suit in O.S.No.366 of 2002 on the file of the District Munsif Court, Harur, for declaration and for recovery of possession. The trial Court, by its judgment and decree dated 07.12.2005, decreed the suit *ex parte*. Pursuant to the decree granted in O.S.No.366 of 2002, the petitioner filed an execution petition in R.E.P. No.21 of 2008 for taking possession of the property.

3.Learned counsel appearing for the petitioner submitted that the respondents have not filed any application to set aside the *ex parte* decree, nor have they filed any appeal as against the judgment and decree passed in O.S.No.366 of 2002 and that the judgment and decree passed in O.S.No.366 of 2002 have become final.

4.In the execution petition, the petitioner was examined as P.W.1 and in her evidence, she has deposed that, she is in possession of the property. Considering the evidence let in by the petitioner to the effect that she was in possession of the property, the Execution Court dismissed the execution petition.

5.The learned counsel appearing for the petitioner submitted that the petitioner is an illiterate woman and without knowing the consequence, she

had deposed that she was in possession of the property. Further, the learned counsel submitted that, the petitioner, having filed an execution petition for taking possession of the property, would not have deposed that she was in possession of the property.

6.It is not in dispute that the decree passed in O.S.No.366 of 2002 has become final. When the petitioner/Decree Holder has filed an execution petition to execute the decree, there is no necessity for her to state that she is in possession of the property. If the petitioner is in possession of the property, she need not have filed the execution petition at all. Therefore, the evidence let in by her stating that she was in possession of the property need not be given any credence. Therefore, in the interest of justice, in order to give one more opportunity to the parties, the order passed by the Execution Court can be set aside and the matter can be remitted back to the Execution Court for fresh consideration.

7.For the reasons stated above, the order in R.E.P. No.21 of 2008 is set aside and the matter is remitted back to the District Munsif Court, Harur, for fresh consideration. The District Munsif, Harur, is directed to decide the matter afresh on merits and in accordance with law, as expeditiously as possible.

M. DURAISWAMY, J.

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8. With these observations, this Civil Revision Petition is allowed. No costs.

23.10.2019

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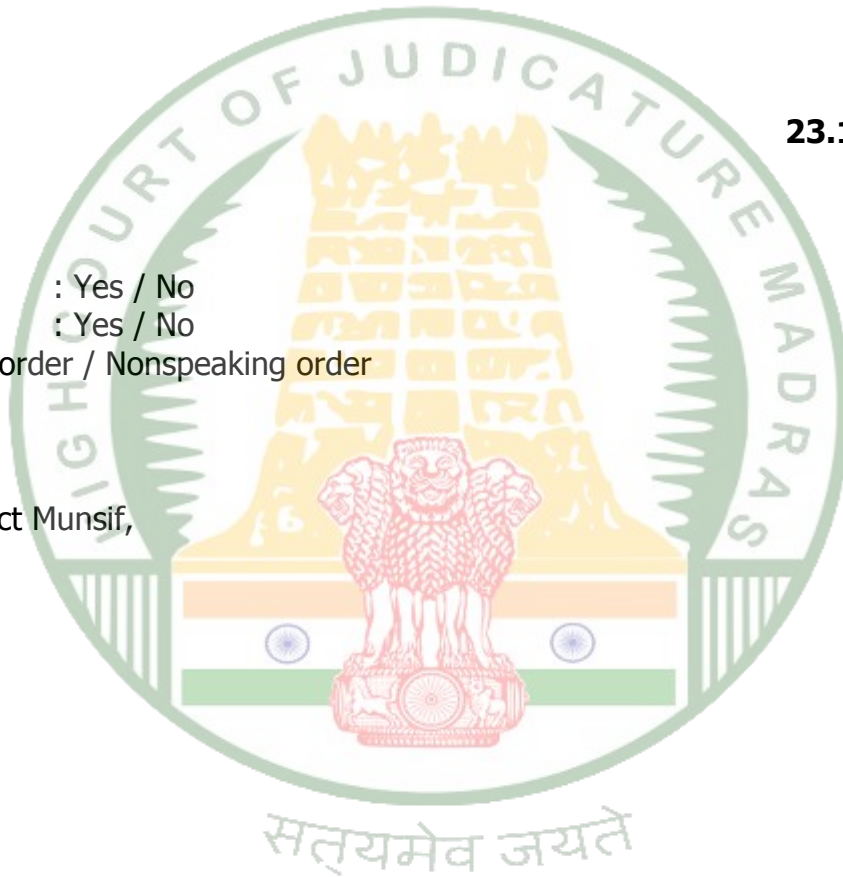
Index : Yes / No

Internet : Yes / No

Speaking order / Nonspeaking order

To

The District Munsif,
Harur.



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