

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.07.2019

Coram

The Honourable Mrs. **Justice R.HEMALATHA**

C.R.P.(NPD)No.577 of 2012

and

M.P.No.1 of 2012

1.Pankajam
Doing Business as
Mummy Daddy
Big Bazaar Street,
Coimbatore.
2.Ponmudi ... Petitioners

Vs.

1.Palaniammal @ Radha
2.Gokul
3.Minor Dhinesh
S/o. late Subramaniam
Rep. by his natural guardian
Palaniammal @ Radha
4.Shanthi @ Baby ... Respondents

This Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the fair and decreetal orders dated 19.07.2011 made in E.P.No.83 of 2009 in O.S.No.479 of 1998 on the file of the District Munsif, Gobichettipalayam, Erode District.

For Petitioners : Mr.Ma.Pa.Thangavel

For Respondents : No appearance

ORDER

The present civil revision petition has been filed against the orders dated 19.07.2011 passed in E.P.No.83 of 2009 in O.S.No.479 of 1998 by the District Munsif, Gobichettipalayam, Erode District.

2.The civil revision petitioners are the respondents 1 and 2 in E.P.No.83 of 2009 in O.S.No.479 of 1998 on the file of the District Munsif Court, Gobichettipalayam, Erode District. The respondents filed E.P.No.83 of 2009 under Order XXI Rule II of the Civil Procedure Code praying to hand over the possession of the suit property as per the final decree passed in O.S.No.479 of 1998. The present civil revision petitioners remained absent in the Execution Petition and therefore they were set exparte. The third respondent alone contested the Execution Petition. The learned District Munsif, Gobichettipalayam allowed the Execution Petition vide his fair and decreetal orders dated 19.07.2011 and posted the E.P. for delivery of property on 18.08.2011. Aggrieved over the same, the present civil revision petition is filed.

3.Mr.Ma.Pa.Thangavel, learned counsel appearing for the civil revision petitioners contended that in the Execution Petition both the civil revision petitioners were not given any notice and therefore the orders passed by the Executing Court cannot be sustained. A perusal of the orders passed by the Executing Court clearly shows that the final decree for partition was passed after giving notice to all the respondents and when the Advocate Commissioner went over to the suit property for taking measurements, he could not serve notice to the present civil revision petitioners since they were not

present in the suit property. Subsequently, the Advocate Commissioner measured the suit property and made division of the suit property in accordance with the preliminary decree passed in O.S.No.479 of 1998 and final decree was passed on 11.04.2005 in accordance with the Advocate Commissioner's Report. Subsequently, the respondents filed a petition in E.P.No.83 of 2009 to get the possession of the suit property.

4.No appearance on behalf of the respondents.

5.A perusal of the records shows that the present civil revision petitioners were served with notice in the execution proceedings and they did not appear before the District Munsif Court, Gobichettipalayam. It is also seen from the records that the civil revision petitioners had participated both in the preliminary decree and final decree proceedings in O.S.No.479 of 1998. However they did not appear in the execution court. The Execution Petition is filed to take delivery of the property allotted to the share of the respondents as per the Advocate Commissioner's report. The revision petitioners did not challenge both the preliminary decree and final decree proceedings. In the circumstances, the orders passed by the learned District Munsif, Gobichettipalayam, is perfectly in order and I do not see any reason to interfere with the

findings recorded by the Executing Court. Accordingly, the civil revision petition is liable to be dismissed.

6.In the result, the civil revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

24.07.2019

rrg

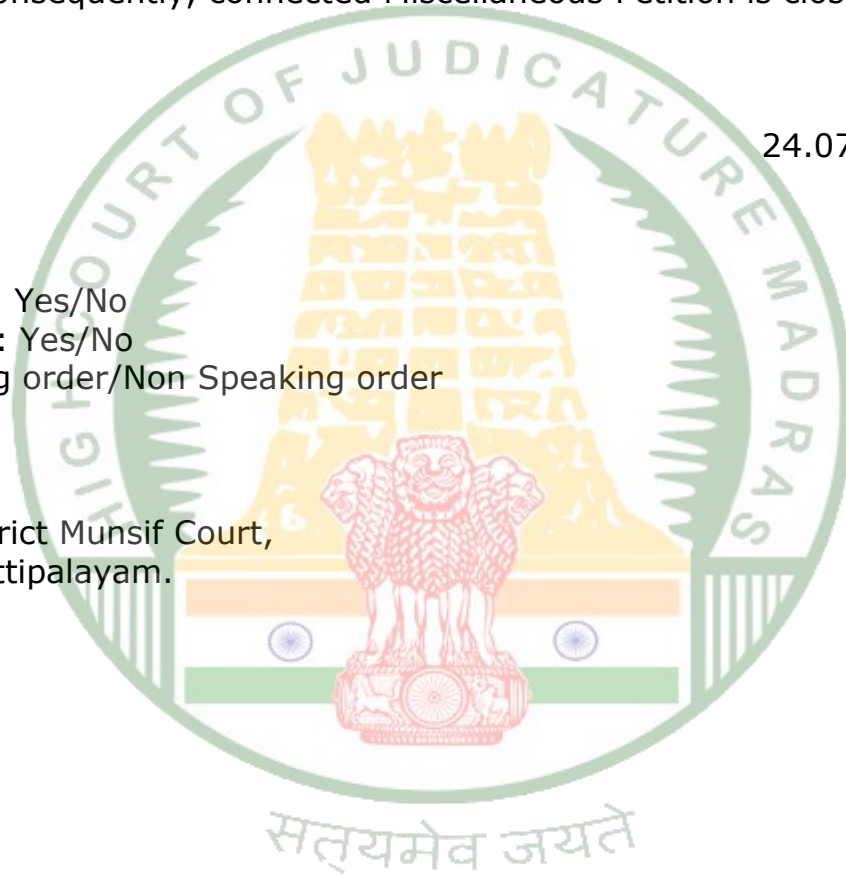
Index : Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

To

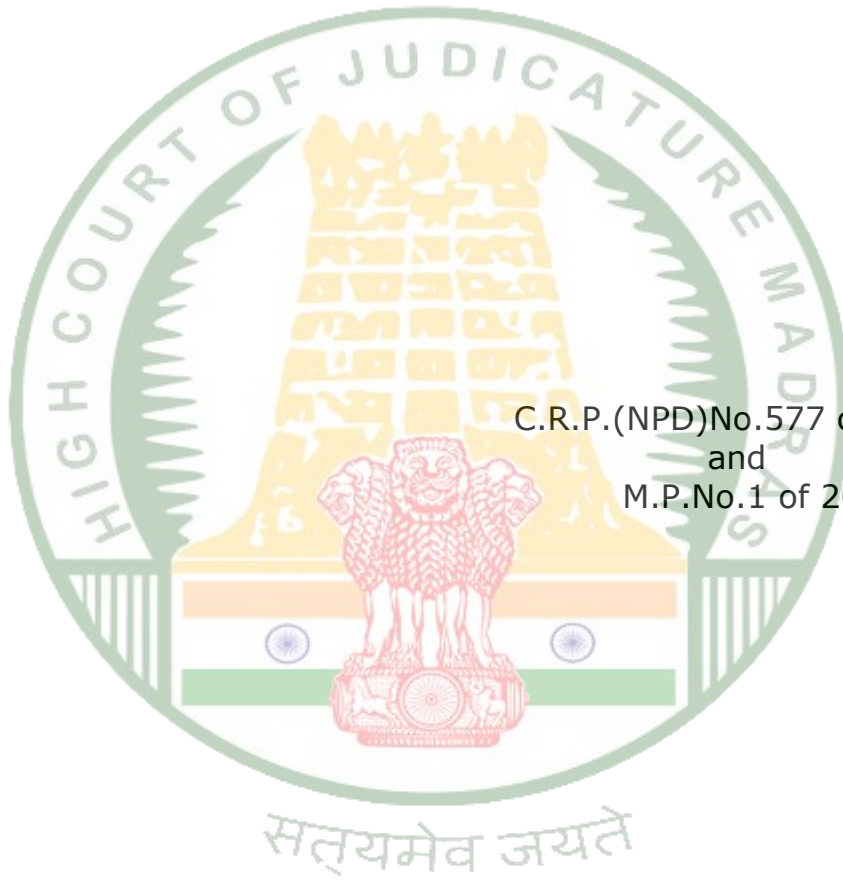
The District Munsif Court,
Gobichettipalayam.



WEB COPY

R.HEMALATHA.J.,

rrg



C.R.P.(NPD)No.577 of 2012
and
M.P.No.1 of 2012

WEB COPY

24.07.2019