

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**C.R.P(PD) Nos.4108 & 4109 of 2015
and M.P.No.1 of 2015**

1.T.R.Venkatachalam
2.S.K.Sadasivam

.. Petitioners in both CRPs.

VS

1.P.K.Mani
2.Palanisamy
3.P.Deivasigamani

.. Respondents in both CRPs.

Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 11.08.2015 passed in I.A.Nos.493 & 494 of 2015 in O.S.No.119 of 2009 on the file of Sub Court, Perundurai.

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For Petitioners : Mr.A.Sundaravadhanan

For R1 : Mr.V.V.Sathya

For R2 & R3 : No Appearance

COMMON ORDER

By this common order, both the civil revision petitions are being disposed.

2. The petitioners are aggrieved by the fair and decretal order dated 11.08.2015 in I.A.Nos.493 & 494 of 2015 passed by the Sub Court, Perundurai. The above Interlocutory applications were filed by the petitioner in the suit. O.S.No.119 of 2009 was filed by the 1st respondent before the Sub Court, Perundurai for declaration and a permanent injunction against the petitioners and respondents 2 and 3 herein. The petitioners are the defendants 3 and 4 in the above suit.

4. I.A.No.493 of 2015 was filed to reopen the suit when the case was listed for pronouncing Judgment on 30.06.2015 for adducing further oral evidence on behalf of the petitioners. The petitioners also filed I.A.No.494 of 2015 to set aside the exparte order passed on 11.02.2010 against them under Order 9 Rule 7 of C.P.C.

5. According to the learned counsel for the petitioners, originally the suit was filed before the Sub Court, Erode which was numbered as O.S.No.134

of 2007 and thereafter the case was transferred to Sub Court, Perundurai and renumbered as O.S.No.119 of 2009.

6. The petitioners were unaware of the transfer of the case as the counsel failed to inform them about the transfer of the case from the Sub Court Erode to Sub Court, Perundurai and was therefore set exparte. Under such circumstances, the petitioners had filed the above application when the case was listed for pronouncing Judgment.

7. During the pendency of the present civil revision petitions, the first respondent also filed I.A.No.636 of 2015 for reopening the case for the purpose of arguments. The said application was also allowed on 28.08.2015.

8. The learned counsel for the petitioners submitted that the petitioners are willing to co-operate with the trial Court and time may be fixed for completion of evidence.

9. The learned counsel for the respondents would submit that the order passed by the lower Court is well reasoned and therefore, requires no interference.

10. In this connection, the learned counsel for the first respondent/plaintiff referred to the decision of the Hon'ble Supreme Court in ***Bhanu Kumar Jai vs. Archana Kumar & Anr.***, 2005(1) CTC 368 wherein the Hon'ble Supreme Court has held that Order 9 Rule 7 of C.P.C. of the Code postulates an application for allowing the defendant to be heard in the suit when he had been set exparte and the suit is adjourned for hearing.

11. In the peculiar facts of the present case, after the case was posted for pronouncing judgment. These applications were filed by the petitioners for reopening the case for adducing additional evidence and to set aside the exparte order passed on 11.02.2010. They were however dismissed. Meanwhile, the first respondent/plaintiff had filed I.A.No.636 of 2015 which came to be allowed on 28.08.2015.

12. To meet the ends of justice, these civil revision petitions can be allowed subject to payment of cost of Rs.5,000/- each in both the cases to the 1st respondent/plaintiff as no prejudice will be caused to the respondents. The aforesaid amount of Rs.10,000/- (Rs.5,000 x 2) shall be deposited to the credit of O.S.No.119 of 2009 on the file of Sub Court, Perundurai, within a period of four weeks from the date of receipt of a copy of this order. On such

deposit being made, the 1st respondent/plaintiff shall be entitled to withdraw the aforesaid amount.

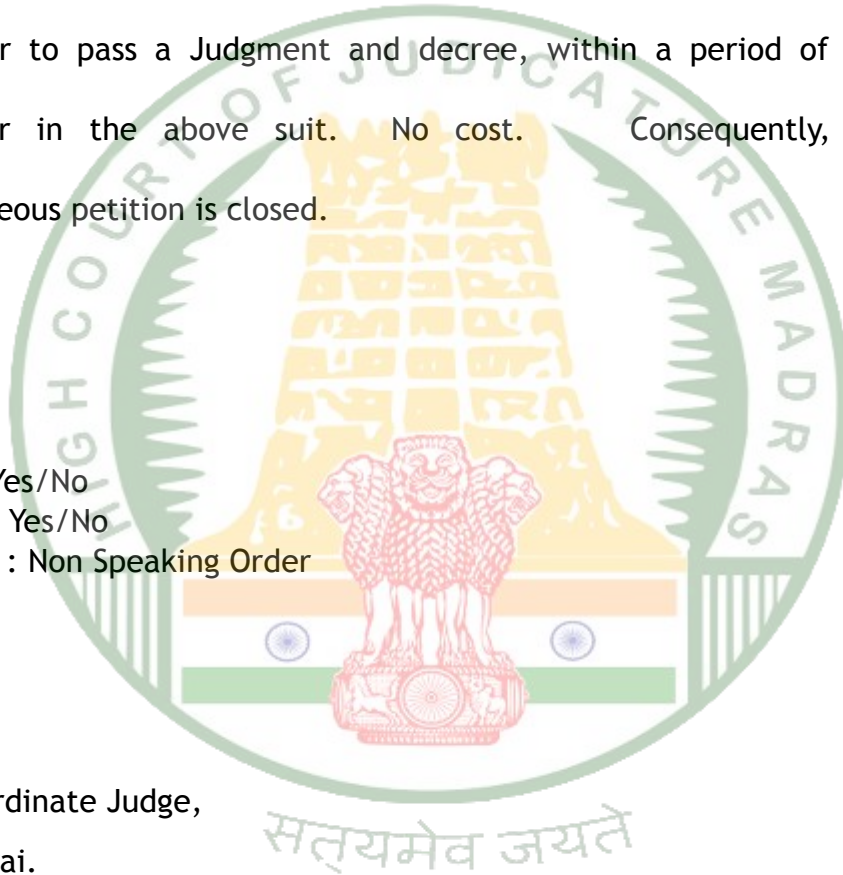
13. The Sub Court, Perundurai shall take up the case for trial and endeavour to pass a Judgment and decree, within a period of six months thereafter in the above suit. No cost. Consequently, connected miscellaneous petition is closed.

07.08.2019

Index : Yes/No
Internet : Yes/No
Speaking : Non Speaking Order
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To

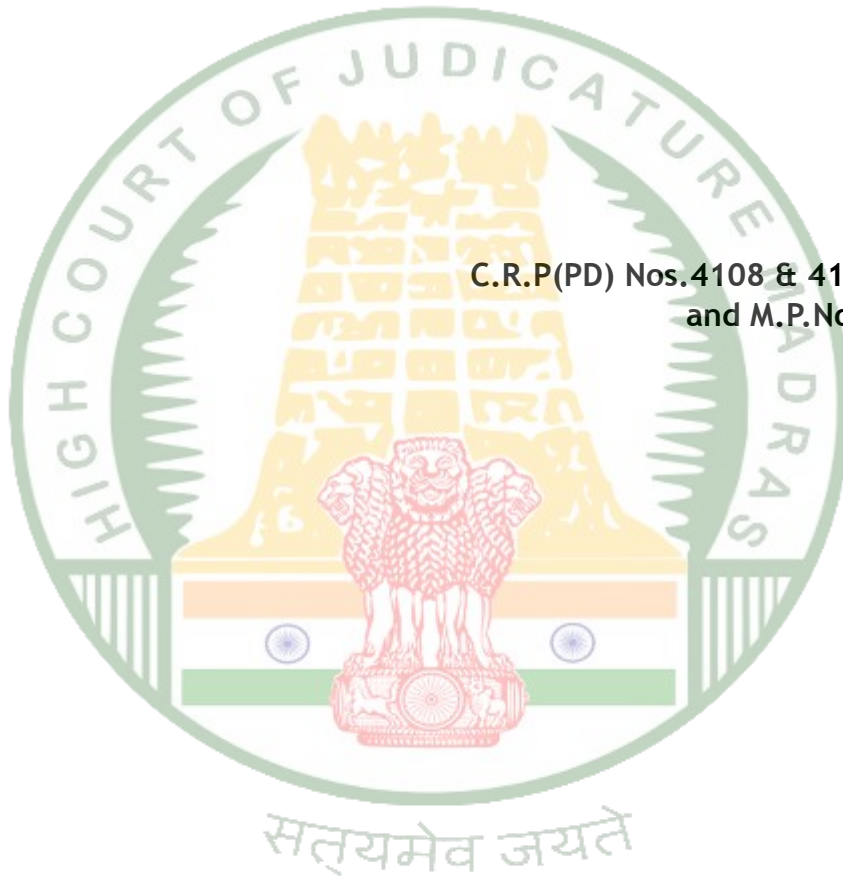
The Subordinate Judge,
Perundurai.



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CRP PD NO.4108 OF 2015

C.SARAVANAN.J
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