

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(NPD).No.1481 of 2018

&

C.M.P.No.7885 of 2018

Kullamma alias Muniamma (Deceased)

1.Srinivasa Reddy

2.Venkata Reddy

3.Sugunamma

4.Kamatchiamma

5.Chandrakala

6.Padma

7.Narayana Reddy

...Petitioners

Vs

Alleliappa (Deceased)

1.Narayanappa

2.Ramachandrappa

3.Aswathnarayana

4.Rajappa ... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 12.01.2018 made in R.E.P.No.26 of 2014 in O.S.No.804 of 1993 on the file of the District Metropolitan and Sessions Court, Dhenkanikota.

For Petitioners : Ms.Dakshayani Reddy

For Respondents : Mr.R.Manivannan

ORDER

The above Civil Revision Petition is filed challenging the fair and decreetal order in R.E.P.No.26 of 2014 in O.S.No.804 of 1993, passed by the District Munsif - cum - Judicial Magistrate, Dhenkanikottai. The facts in brief are as follows:

2.The revision petitioners had filed a suit O.S.No.804 of 1993 for a declaration of their title to an extent of 1.46 Acres and for recovery of possession failing which to grant a mandatory

injunction as well as a cost of Rs.500/-.

3.The plaintiffs have claimed a title to the said property on the basis of the sale deed in their favour as well as the gift deed. The learned District Munsif, Dhenkanikottai has clearly returned a finding that the plaintiffs are entitled to the southern 1.46 Acres. Ultimately, the decree came to be passed on 29.11.2002. The respondents/defendants had taken a plea of adverse possession which is negated by the Court below.

4.Thereafter, the possession was not handed over as directed in the decree. The revision petitioners have moved the Execution Proceedings, subject matter of this revision petition for directing the defendants to hand over the possession of the 1.46 Acres in the southern side of the property which as been described as follows: सत्यमेव जयते

"Denkanikotta Talu, thally Firka, Kottamadugu Village,

(1)S.No.505/A1 dry 0.37.5 assessed at Rs.1.31.

(2)S.No.505/2 dry 0.47.0 Asst. at Rs.1.62

(3)S.No.506/2B dry 0.18.0 Ass.at Rs.0.61

Total 1.02.5 Hectares asst. at Rs.3.54.

In this the plaintiffs are entitled for Acres 1.46 cents on southern side – as per the decree and judgement."

5.The execution proceedings was initiated against the defendants 2 to 6 and the legal heirs of the deceased 1st defendant. A counter has been filed by the deceased 1st defendant children who would contend that they have not been made a party in the original suit O.S.No.804 of 1993. They have further contended that the suit for partition had been filed by one Mallesh in O.S.No.82 of 1995 and therefore the execution petition cannot be ordered.

6.The learned Judge without appreciating the fact that the decree and Judgement clearly states that the property which belongs to the decree holder/plaintiff is the southern extent of 1.46 Acres dismissed the execution petition on the ground that the execution is sought to be laid in respect of undivided interest and that unless the undivided share is defined by filing the suit for partition the present execution petition cannot be maintained. Challenging the said order the revision petitioners are before this Court.

7.Ms.Dakshayani Reddy, learned counsel for the decree holders and Mr.R.Manivannan, learned counsel for the respondents are before this Court. The learned counsel for the respondents would once again reiterate the contentions raised in the suit namely that they have been in enjoyment of the property for well over the prescribed period and they have therefore prescribed title over the same.

8.In support of his contention he would rely upon the Judgement in ***M.V.S.Manikayala Rao Vs. M.Narasimhaswami and others*** reported in ***AIR 1966 Supreme Court 470***. The learned counsel would also argue that unless and until there is a partition by metes and bounds the execution proceedings cannot be maintained since the property involved is an undivided interest. In support of the said contention he would rely upon the Judgement in ***Gajara Vishnu Gosavi Vs. Prakash Nanasahed kamble and others*** reported in ***2010-2-L.W.712***.

9. Heard the counsels and perused the papers. A reading of the Judgement in O.S.No.804 of 1993 would clearly establish that the Court below has returned a finding that the plaintiff is entitled to the southern end measuring 1.46 Acres from out of the total extent of land and this decree has not been challenged by the respondents/defendants and therefore the same has acquired finality. It is this property that is sought for in the execution petition, subject matter of the revision.

10. The learned Judge has totally overlooked the description of property that has been given in the schedule to the execution petition, wherein it has been clearly stated that what is sought to be recovered is 1.46 Acres in the southern end of the total extent. The learned Judge has simply gone by the counter filed in the execution petition that property is undivided and therefore the suit for partition has to be filed. This in my considered opinion is totally wrong especially in the light of the finding returned by the District Munsif, Dhenkanikottai. Therefore the order passed by the learned Judge suffers from perversity and

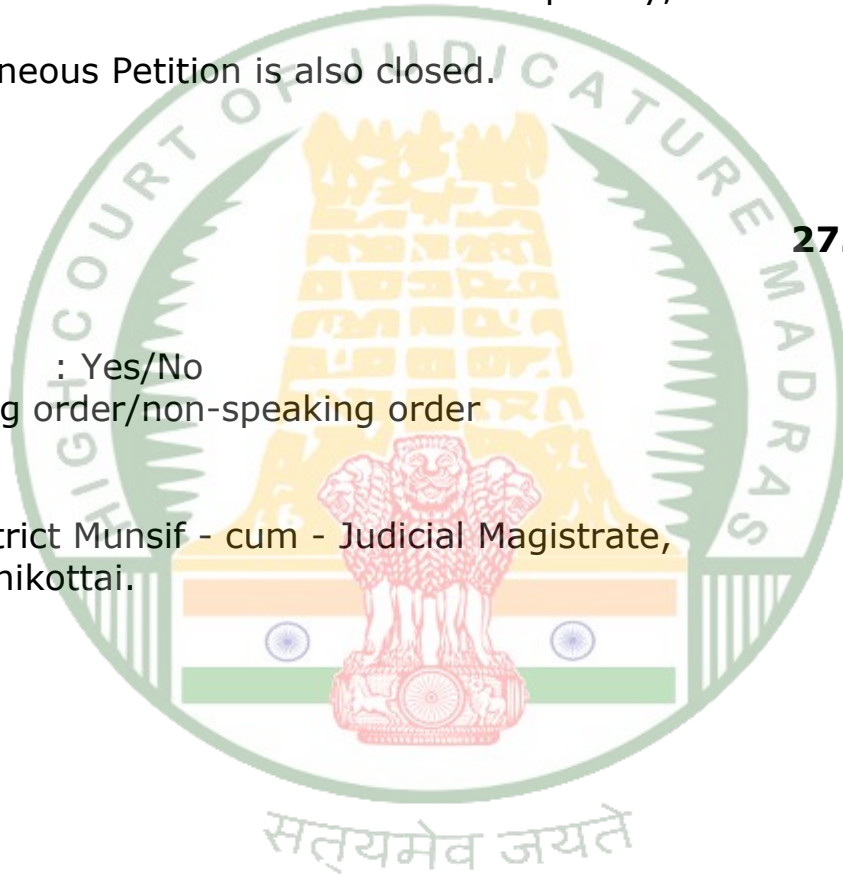
infirmity and is therefore set aside.

The Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

27.04.2019

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Index : Yes/No
Speaking order/non-speaking order

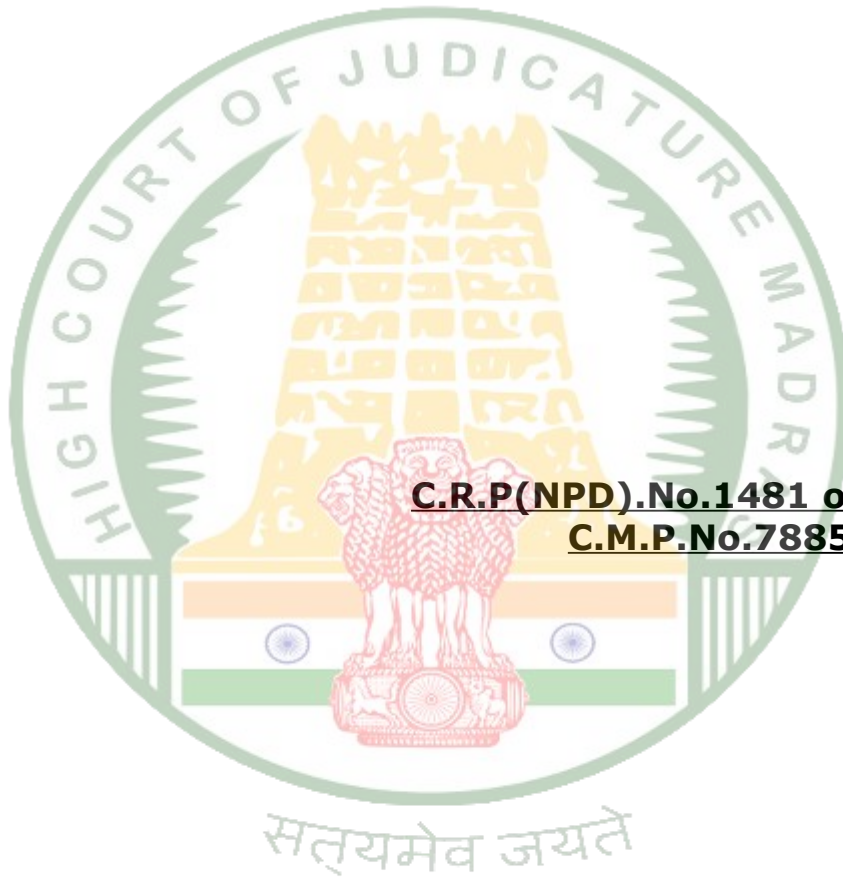
To,
The District Munsif - cum - Judicial Magistrate,
Dhenkanikottai.



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P.T.ASHA, J.,

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