

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP.PD.No.2053 of 2013

and

MP.No.1 of 2013

G.Thirumal

... Petitioner

vs.

1.Dr.Vijayalakshmi

2.V.Priyadharsini

3.Nithyanandhini

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 19.07.2012 passed in IA.No.33 of 2011 in OS.No.21 of 2008 on the file of the Additional District Court, Dharmapuri.

For Petitioner : Mr.P.Mani

For Respondents : No appearance

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ORDER

The revision petitioner is the fifth defendant in OS.No.21 of 2008 on the file of the Additional District Court, Dharmapuri. The respondents 1 to 3 filed the said suit for partition of three items of the suit properties into

four equal shares and to allot three such shares to them. The defendants filed their respective written statements and the parties went for trial. Subsequently, the present revision petitioner filed a petition in IA.No.33 of 2011 under Section 151 of the Code of Civil Procedure to decide the issue of maintainability of the suit as a preliminary decree. The main contention of the revision petitioner is that since one of the suit properties has been sold under the SARFAESI Act, 2002, the civil suit is not maintainable.

2. The learned Additional District Judge, Dharmapuri vide his fair and decreetal orders dated 19.07.2012, dismissed the said petition on the ground that, before 1976 amendment to the Code of Civil Procedure, it is mandatory on the part of the Court to decide an issue, in the first instance if it is purely a question of law and that after the amendment it is only the discretion of the Court and moreover since the trial has already commenced in the instant case, the maintainability of the civil suit would be decided along with the other issues. Aggrieved over the orders passed by the learned Additional District Judge, Dharmapuri, the present Civil Revision Petition is filed.

3. Mr.P.Mani, learned counsel appearing for the civil revision petitioner would contend that the trial has concluded and the suit in OS.No.21 of 2008 is now posted for arguments.

4. It is also seen from the records that there are three properties described in the plaint schedule, out of which, the second schedule property is said to be sold under the SARFAESI Act, 2002. Since the trial has concluded and the suit is posted for arguments, the learned Additional District Judge, Dharmapuri is directed to dispose of the suit in OS.No.21 of 2008 within a period of one month from the date of receipt of a copy of this order. The learned Additional District Judge, Dharmapuri should also decide the maintainability of the civil suit after framing necessary issues in this regard.

5. With the above observations, the present Civil Revision Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

27.08.2019

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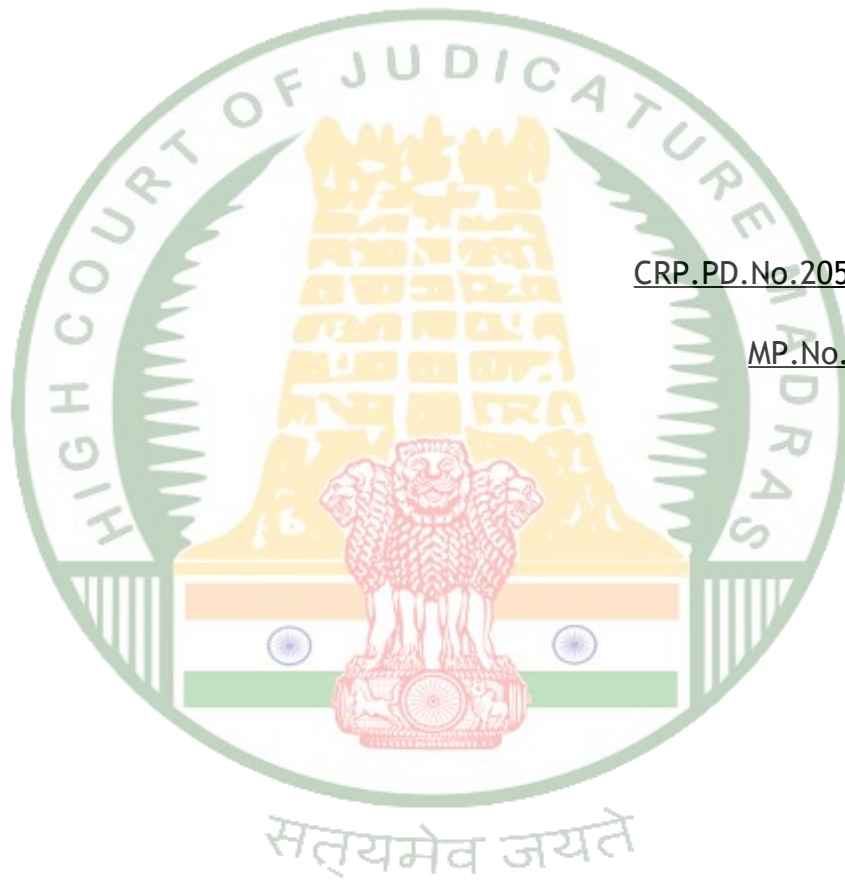
Index : Yes/No

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R.HEMALATHA, J.
mbi

To

The Additional District Court
Dharmapuri.



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