

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP.NPD.No.2108 of 2013
and
MP.No.1 of 2013

Pechiammal

...Petitioner

vs.

1.Koolan @ Muniappan

2.Nagarajan

3.Ellappa

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal orders dated 06.10.2012 in IA.No.333 of 2012 in OS.No.169 of 2007 on the file of the District Munsif cum Judicial Magistrate Court, Denkanikottai.

For Petitioner : Mrs.R.Sripriya
for Mr.V.Raghavachari

For Respondents : No appearance

ORDER

This revision petitioner is the petitioner in IA.No.333 of 2012 in OS.No.169 of 2007 on the file of the District Munsif cum Judicial Magistrate Court, Denkanikottai. The revision petitioner filed IA.No.333 of 2012 under Section 152 of the Code of Civil Procedure to amend the decree passed in OS.No.169 of 2007.

2. The learned District Munsif cum Judicial Magistrate, Denkanikottai after analysing the evidence on record, dismissed the application filed by the civil revision petitioner vide his fair and decreetal orders dated 06.10.2012. Aggrieved over the same, the present Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure.

3. Mrs.R.Sripriya, learned counsel appearing for the civil revision petitioner contended that though the prayer in the plaint is for directing the defendants to deliver vacant possession of the suit property to the plaintiff within a time frame, the said relief was not granted and when Execution Petition was filed by the revision petitioner / plaintiff before the Executing Court, the same was returned for the reason that the decree should be

amended. Therefore, the learned counsel appearing for the revision petitioner contended that the learned District Munsif cum Judicial Magistrate, Denkanikottai was wrong in dismissing the application filed by him under Section 152 of the Code of Civil Procedure.

4. No appearance on behalf of the respondents.

5. A perusal of the entire records shows that OS.No.169 of 2007 was filed by the revision petitioner / plaintiff for specific performance of contract and the suit was decreed exparte on 25.08.2008. In the Judgment, it is clearly observed that the defendants 1 to 3 should execute a sale deed within a period of three months from the date of the decree, failing which, the court would execute the sale deed in favour of the plaintiff. It is further observed that the plaintiff should deposit the entire sale consideration before the court within a period of one month. The details of the proposed amendments in the petition filed in IA.No.333 of 2012 under Section 152 of the Code of Civil Procedure, extracted hereunder:

"Amendment No.1: Delete the relief No.2, completely and substitute the same with the following:

2. The defendants should hand over the vacant possession of the suit property to the plaintiff within a period of one month."

6. In the decree and Judgment dated 25.08.2008, the defendants were directed to execute the sale deed within a period of three months and the plaintiff was directed to pay the entire sale consideration within a period of one month. Therefore, the amendment sought for in the petition in IA.No.333 of 2012 directing the defendants to handover the vacant possession of the suit property within a period of one month cannot be sustained since it would be contra to the Judgment passed by the learned District Munsif cum Judicial Magistrate, Denkanikottai. Furthermore, such an amendment cannot be included in the decree when there is no specific directions to that effect in the Judgment. The orders passed by the learned District Munsif cum Judicial Magistrate, Denkanikottai is perfectly in order and I do not see any reason to interfere with the same. The civil revision petitioner is directed to file a fresh Execution Petition for execution of the decree, if so advised.

7. With the above observations, the present Civil Revision Petition

is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

06.08.2019

mbi

Index : Yes/No

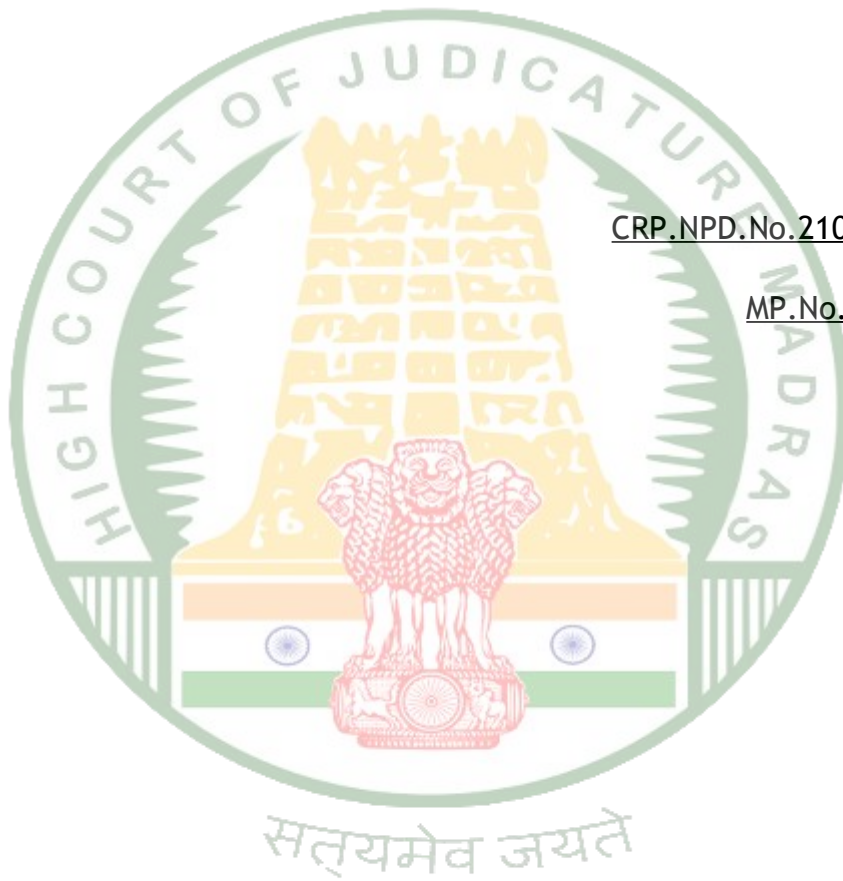
To

The District Munsif /
Judicial Magistrate Court,
Denkanikottai.



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R.HEMALATHA, J.



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