

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE N.SATHISH KUMAR

C.R.P.(P.D.) No.3307 of 2013

Kittusamy

...Petitioner

versus

1. K.Vellaisamy

2. Mani @ Subramaniam

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 22.03.2013 passed in C.F.R.No.3412 of 2013 on the file of Principal District Munsif Court, Gobichettipalayam.

For Petitioner : Mr.P.Valliappan

For Respondents : Mr.A.V.Arun

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ORDER

This Civil Revision Petition has been filed against the dismissal of the suit even before numbering at SR Stage dated 22.03.2013 passed in C.F.R.No.3412 of 2013 on the file of Principal District Munsif Court, Gobichettipalayam.

2. The facts leading to filing of this Revision is as follows:-

The suit has been filed to declare the sale deed in favour of the second defendant null and void and also for permanent injunction. The plaintiff had pleaded in his plaint that he is the adoptive son of the first defendant and there was a partition between himself and the first defendant and the first defendant continues to enjoy his suit property. Therefore, he sought injunction. The learned District Munsif, Gobichettipalayam, rejected the suit even before numbering at CFR stage. As against which, the present revision is filed.

3. The learned counsel for petitioner submitted that the trial Judge ought not to have rejected the plaint even before the suit has been numbered. The order is not according to the law and hence, prays for allowing the present revision.

4. The learned counsel for the respondents contended that the trial Court taking note of the fact that there is no cause of action and no documents filed and finally adjudicated and rejected the plaint. Therefore, the only relief available to the petitioner is to file an appeal against the said order of rejection and revision is not maintainable.

5. I have perused the order of the trial Court.

6. The trial Court at the CFR stage itself, placed the questions with regard to the documentary evidence, oral partition and adoption and held that the suit is not maintainable.

7. The learned counsel for respondents placed much reliance on the following decisions:-

- 1. S.Manoharan Vs. T.Mayakkannan and another [(2008) 4 MLJ]**
- 2. Veerappan Vs. Ramamoorthy and another [2011-5-L.W.538]**
- 3. Govindarajan Padayatchi Vs. Premananda Vijayakumar @ Prem Anand and others [2013 (6) CTC 467]**

8. On perusal of the above judgments, it is clear that when the order of the trial court rejecting the plaint, only appeal will be maintainable. There is no dispute with regard to the above judgments. The contention of the learned counsel for the respondents that the suit has been rejected and there was adjudication by the trial Court. Therefore, the order will be deemed as a decree. The contention of the respondents cannot be countenanced for the simple reason that to construe an order as a decree, there must be a formal expression of adjudication by the trial Court, which conclusively determines the rights of the parties with regard to all or any of the matter and for such adjudication, there must be a suit. Without the suit being numbered, the trial Court dismissing the suit without proper adjudication, same cannot be turned as a decree. Therefore, this Court can invoke the powers under Article

227 of The Constitution of India and set aside the same. There must be adjudication and determination of the rights of the parties conclusively and finally and mere order of rejecting the suit without even the suit has been numbered, cannot be turned as decree.

9. Hence, this revision is well maintainable. Formal adjudication will arise only when the Court took cognizance of the suit i.e., after the suit has been numbered and decision is taken, which affects the rights of the parties. The order of the trial Court, without allowing the parties to let in evidence to substantiate their contentions, is perverse. Trial Court assumes the role of defendants and rejected the suit and the same is hereby set aside. Trial Court is directed to number the suit and decide the suit on merits.

10. With the above observations, this Civil Revision Petition is allowed.

No costs.

12.02.2019

Index:Yes/No

Speaking/Non-speaking Order

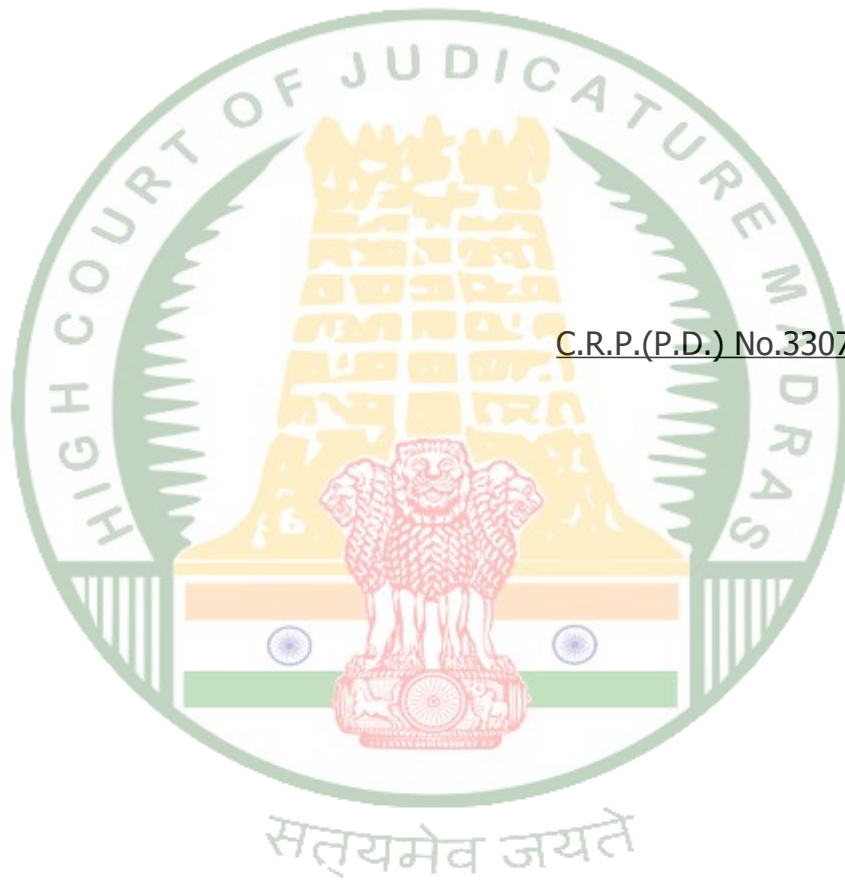
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To

The Principal District Munsif,
Gobichettipalayam.

N.SATHISH KUMAR, J.

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