

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE N.SATHISH KUMAR

C.R.P.(PD).No.1686 of 2018

and

C.M.P.No.9279 of 2018

Sri Krishnasamy Educational Trust,
Rep.by its Managing Trustee,
Dr.K.Rajendran

...Petitioner

Vs.

1.P.Sundara Rajan
2.S.Anjali Devi

...Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 07.04.2018 in unnumbered O.S.No. of 2018 on the file of the Principal District Court, Cuddalore.

For Petitioner : Ms.Hema Sampath
Senior Counsel for
Ms.R.Meenal

For Respondents : No appearance

ORDER

This revision petition has been filed as against the order of the trial Court rejecting the suit filed for claiming the share of the 4th defendant in

O.S.No.4 of 2004, on the file of the Additional District Judge (Fast Track Court No.II) Cuddalore.

2. The suit has been preliminarily filed for declaring that the plaintiff is entitled for a sum of Rs.55,58,345/- with future interest being 1/7th share of the 4th defendant, which is lying in the Court deposit to the credit of O.S.No.4 of 2008, on the file of the Additional District Judge-cum-Fast Track Court No.II, Cuddalore. However, before numbering the suit, the Principal District Judge, Cuddalore returned the suit on the ground that as per the mediation, the parties can only approach the Supreme Court for appropriate orders.

3. Heard Ms.Hema Sampath, learned Senior Counsel for the petitioner. Despite service of notice to the respondents and their names being printed in the cause list, there is no appearance either in person or through counsel.

4. It is not in dispute that the revision petitioner was the 2nd defendant in O.S.No.4 of 2004, which was filed by the purchasers of the suit property. As against the concurrent findings of the Courts, the revision petitioner has filed a Special Leave petition in S.L.P.(c).No.1687 of 2017, wherein, mediation proceedings were effected between the parties and the revision petitioner has agreed to pay the additional sale consideration and the same has been accepted by the Supreme Court. In pursuant to the same the aforesaid S.L.P was disposed of

and the title to the revision petitioner is confirmed in respect of the suit properties. The defendants 1 and 4 in O.S.No.4 of 2004, remained exparte through out the entire proceedings.

5. It appears that after the amount has been transferred to the concerned Court for apportionment of the shares of the co-owners, the present suit has been filed by the revision petitioner for declaring that they are entitled to the shares of the 4th defendant in O.S.No.4 of 2004, by making various allegations. At this stage, without numbering the suit, the Court below has rejected the plaint, mainly by taking note of the mediation proceedings. It is to be noted that the suit was filed on separate cause of action, by alleging that the revision petitioner is entitled to the share amount of the 4th defendant in O.S.No.4 of 2004. When that being the position, I am of the view that if the suit was filed for different cause of action, the trial Court ought to have numbered the suit first, then, decide the issue on merits. Accordingly, the order of the trial Court, rejecting the suit is set aside and the Principal District Judge, Cuddalore, shall number the suit and issue notice to the defendants and decide the suit on merits. As the plaintiff has come to the Court to establish their case for such declaration, it is for them to establish their claim. The trial Court shall decide the issue and come to a conclusion, whether the plaintiffs are entitled to such relief as prayed for.

N.SATHISH KUMAR, J.
ms

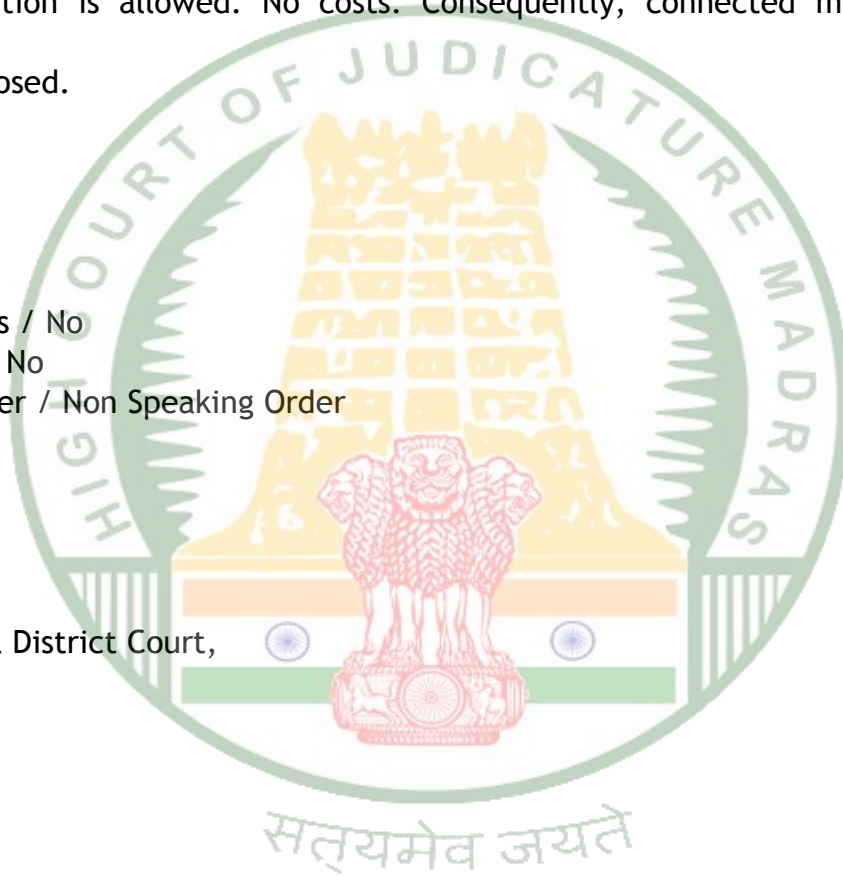
6. With the above direction, the order of the trial Court is set aside and directed to number the suit and decide on merits and in accordance with law. The revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

22.04.2019

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

The Principal District Court,
Cuddalore.



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