

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2019

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THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(PD).No.302 of 2016

and

C.M.P.Nos.1415 of 2016 & 1178 of 2018

Dharani

..Petitioner/Plaintiff

Vs

1.Krishnaveni

2.Mr.Veerappan Maistry

.. Respondents/Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decree dated 27.11.2015 passed in I.A.No.185 of 2015 in O.S.No.38 of 2011 on the file of the Hon'ble II Additional District Judge, at Puduchery and allow the above Civil Revision Petition.

For Petitioner : Mr.K.S.Ilagovan

For Respondents : Mr.A.Kripakaran

ORDER

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The above Civil Revision Petition is filed challenging the order passed by the learned II Additional District Judge, Puduchery, in I.A.No.185 of 2015 in O.S.No.38 of 2011, which is a petition to condone delay in filing the petition mentioned documents and to receive the same on file.

2 The facts in brief which are necessary for disposing of the Civil Revision petition are as follows:

The revision petitioner/plaintiff had filed the suit for a declaration, to declare her as the absolute owner of the suit property and for an injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the suit property. Plaintiff claims title through one Pandian, the legal heir of the original owner Cadirvelou @ Vajoumouny, which according to the plaintiff fell to his share under a Partition Deed dated 03.11.1999. In the written statement filed on 18.07.201, the defendants have denied the very Partition Deed dated 03.11.1999, between the legal heirs of the said Cadirvelou @ Vajoumouny. The parties had gone to trial and the plaintiff had been examined in chief and cross and evidence of the plaintiff had concluded on 02.04.2014 and thereafter, the evidence of the defendants had been closed. When the matter was posted for arguments, the plaintiff has come forward with the impugned application. The only reason, which has been given in the affidavit filed in support of the said application is that, it was only recently that the plaintiff had come across the partition deed dated 03.11.1999 and that she was tracing her title to the suit property through this document. The same was seriously opposed by the defendants 1 and 2 and ultimately by an order dated 27.11.2015, the said petition has dismissed.

3 The learned II Additional District Judge, Puduchery, had stated that petition was only filed to fill up the lacuna and that when the matter was pending for argument the present petition had been filed and therefore, there was no merits in the said application and dismissed the same. Challenging the same, the plaintiff is before this Court.

4 Mr.K.S.Ilagovan, learned counsel appearing on behalf of the revision petitioner would argue that the plaintiff had already mentioned about this Partition Deed, even in her plaint and in the chief-examination and therefore, no prejudice, whatsoever would be caused to the respondents if the said document was filed.

5 Per contra, Mr.A.Kripakaran, learned counsel appearing on behalf of the respondent would state that the Partition Deed has deliberately not been filed though, it was shown as item No.14 in the list of documents annexed to the plaint. However, in the chief examination, this document has been deliberately omitted and therefore, the present application is filed only to fill up lacuna, since questions were asked in cross examination to the plaintiff's witness as to the right over the property.

6 Heard the counsel and perused the records.

7 From a perusal of the affidavit filed in support of the said application, it is seen that the plaintiff has come forward with a contention that she has come to know about the said document only recently. In fact, the affidavit would read as follows:

"I submit that now the suit is posted for arguments. I submit only recently, I gain knowledge that my vendor's Antecedent Deed namely Partition Deed, Encumbrance certificate and the legal heirs certificates were not filed and marked as Exhibits".

This statement cannot be countenanced for the simple reason that in the plaint, the plaintiff had narrated about the said documents and had also filed Xerox copies of the same along with the plaint. However, during the filing of the proof affidavit, though mention has been made from the list of exhibits/documents, the same has been deleted. However, the primary defence of the respondents is that the plaintiff and her vendor do not have any title to the suit property and the partition deed had been denied. In these circumstances, as soon as the written statement had filed, the plaintiff should have taken necessary steps to take certified copies of the said Deed, which is a registered document also. The plaintiff could have applied for certified copies of the judgment by filing a third party affidavit. Having failed to do so at the earliest moment, the plaintiff cannot be permitted to now fill up the lacuna by filing the said application. The Court below has rightly dismissed the said petition. This Court find

no infirmity in the order pay by the Hon'ble II Additional District Judge, Puduchery in I.A.No.185 of 2015 in O.S.No.38 of 2011.

8 In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

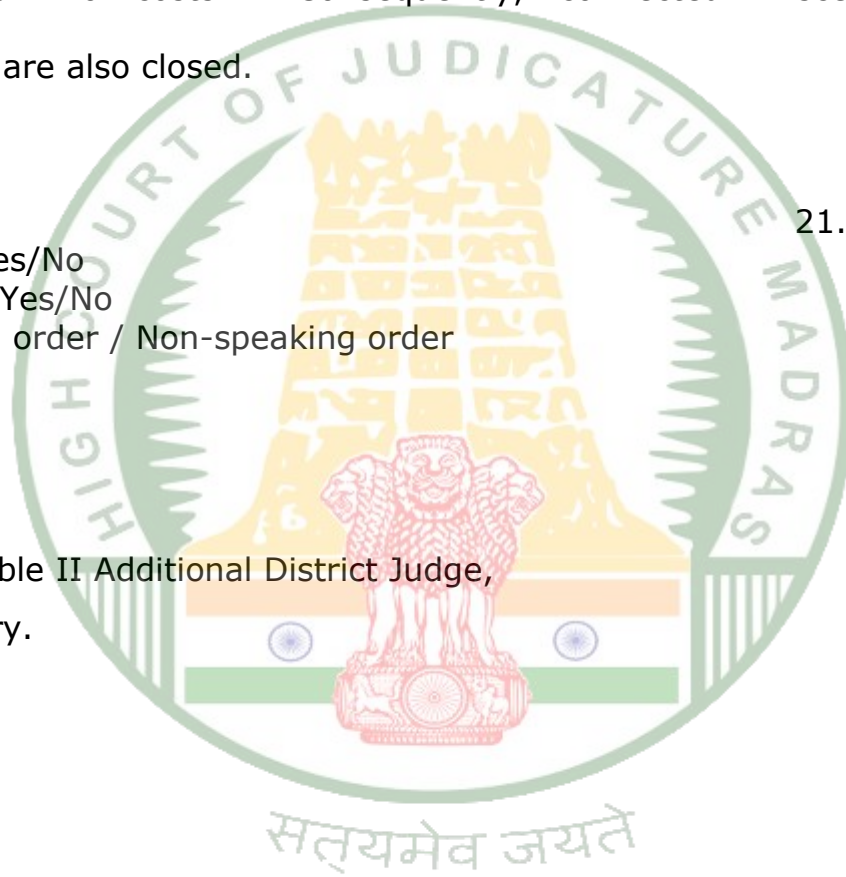
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Index: Yes/No
Internet: Yes/No
Speaking order / Non-speaking order

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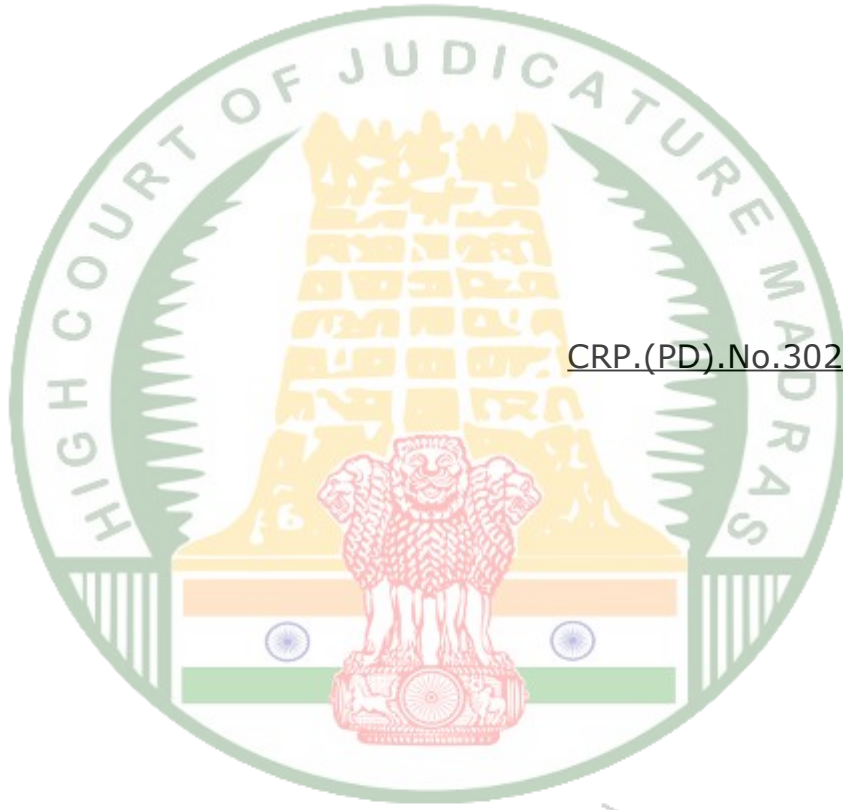
To

The Hon'ble II Additional District Judge,
Puduchery.



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P.T.ASHA, J.
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