

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2019

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

CRP.(PD).No.936 & 937 of 2018

and

C.M.P.Nos.5035 & 5036 of 2018

C.R.P.No. 936 of 2018:

Kandasamy

..Petitioner/2nd Defendant

Vs

1.K.Chellappan

.. Respondent/4th Defendant

2.Velumani

.. Respondent/Plaintiff

3.Ettiappan

.. Respondent/1st Defendant

4.Thangammal

.. Respondent/3rdDefendnat

C.R.P.No. 937 of 2018:

Kandasamy

..Petitioner/2nd Defendant

Vs

1.Velumani

..1st Respondent/Plaintiff

2.Ettiappan

.. 2nd Respondent/1st Defendant

3.Thangammal

4.K.Chellappan

.. Respondents/Defendants3&4

COMMON PRAYER: Civil Revision Petitions filed under Section 115 of C.P.C., against the fair and decretal orders dated 08.09.2017 passed in R.E.P.Nos.39, 40 of 2011 in O.S.No.182 of 1989 on the file of the Sub Court, Namakkal.

For Petitioner

: Mr.R.M.D.Nazrullah
in both petitions

For R1 & R4

: Mr.V.Balamurugan

For R2

: Not ready in notice

For R3 : No appearance
in CRP.No.937/2018

For R1 : Not ready in notice
For R2 to R4 : No appearance
in CRP.No.936/2011

COMMON ORDER

The above Civil Revision Petitions arises against the orders passed in E.P.No.39 of 2011 and E.P.No.40 of 2011, both filed for delivery of possession of the properties, which are the subject matter of the Suit in O.S.No.182 of 1989.

2 C.R.P.No. 936 of 2018 arises against the order passed in E.P.No.39 of 2011 and C.R.P.No. 937 of 2018 arise against the order passed in E.P.No.40 of 2011. The third judgment debtor is the revision petitioner before this Court. He challenged the order passed in the two execution petitions on the ground that the learned Subordinate Judge, Namakkal, has ignored the pendency of S.A.No.976 of 2011, which arises out of the suit in O.S.No.532 of 2000, in which the property, which is the subject matter of the execution petitions, is also the subject matter of the present suit. And therefore, it is their contention that the execution petition ought to be stayed. The said contentions were not taken into consideration by the learned Subordinate Judge, Namakkal, who proceeded to direct delivery of possession, the learned Judge had also observed

that the revision petitioner had not produced the copy of the interim order passed by this Court in the said Second Appeal.

3 Heard Mr.R.M.D.Nazrullah, learned counsel appearing on behalf of the petitioner and Mr.V.Balamurugane, learned counsel appearing on behalf of the respondents in the C.R.P.No.937 of 2018.

4 The copy of the said petition in S.A.No.976 of 2011, has been produced by Mr.R.M.D.Nazrullah, learned counsel appearing on behalf of the revision petitioner. A perusal of the same would show that the property that has been described as Suit item No.1 in the execution proceedings are the same properties, which are the subject matter of the S.A.No.976 of 2011. Therefore, in view of the stay granted by this Court, the execution cannot be proceeded against the said properties. Admittedly, there is no suit/order with reference to the other two items of the property.

5 Considering the above, the orders passed in E.P.Nos.39, 40 of 2011 are modified to the extent that the execution shall not proceed against the first item of property described in the schedule to the execution petition in both E.P.Nos 39 of 2011 as well

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as 40 of 2011 and the respondents are free to proceed with execution in respect of the other two items of property.

6 In the result, these Civil Revision Petitions stands allowed. No costs. Consequently, connected miscellaneous petitions are also closed.

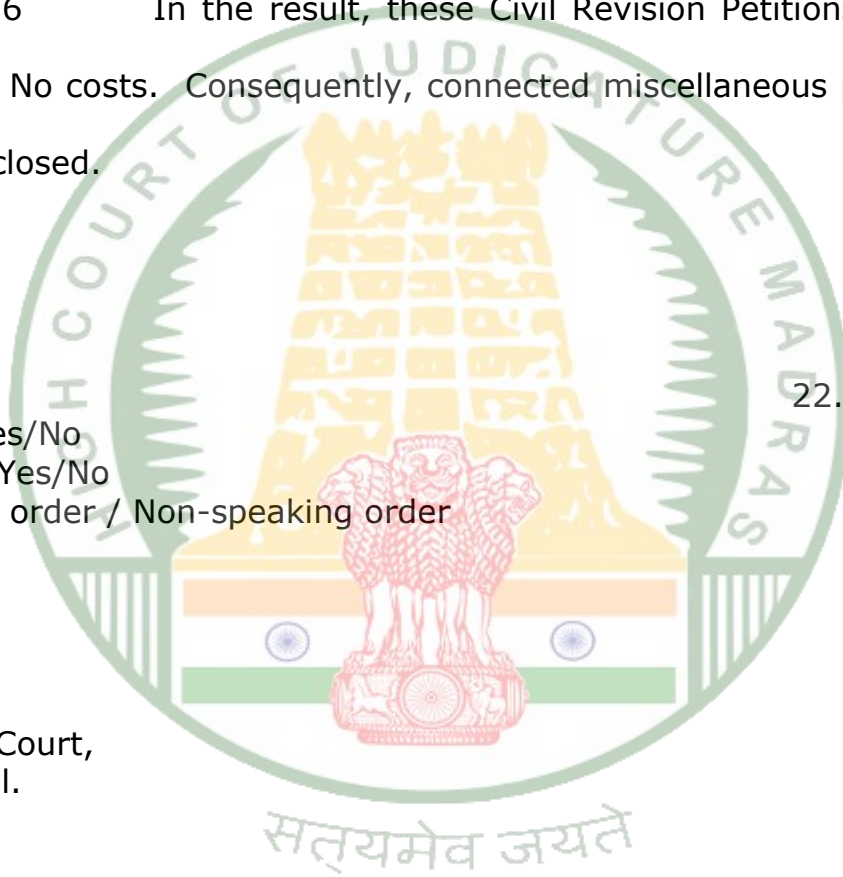
22.02.2019

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

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To

The Sub Court,
Namakkal.



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