

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD) No.2536 of 2014
and
M.P. No.1 of 2014

1.Rajesh
2.Sampoorani

... Petitioners

Vs

Dhanam

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and final orders dated 10.09.2013 passed in I.A.No.147 of 2013 in O.S.No.8 of 2013 on the file of the II Additional District Judge, Salem.

For Petitioner सत्यमेव जयते : Mr.R.Nalliyappan

ORDER

The instant civil revision petition has been filed challenging the order dated 10.09.2013 passed by the learned II Additional District Judge, Salem in I.A.No.147 of 2013 in O.S.No.8 of 2013.

2. Heard Mr.R.Nalliyappan, learned counsel for the petitioner.

3. Aggrieved by the dismissal of Order VII Rule 11 CPC application I.A.No.147 of 2013 filed by the petitioners who are the defendants 3 and 4 in the suit O.S.No.8 of 2013 seeking rejection of plaint filed in O.S.No.8 of 2013, the instant civil revision petition has been filed. In the rejection of plaint application, the petitioners had raised two grounds viz., (a) the respondent/plaintiff does not have any share in the suit schedule property, (b) the suit has not been properly valued.

4. According to the petitioners, they are in possession of the suit schedule property whereas in the plaint, they have not whispered as to who is in possession of the suit schedule property. But however, the respondent/plaintiff has paid the court fee under Section 37(ii) of the Tamil Nadu Court Fee Act, as if, he is in possession of the suit schedule property.

5. It is the contention of the learned counsel for the petitioners that even though two grounds were raised, the Trial Court did not consider the second ground viz., improper valuation of the suit.

6. Admittedly, the petitioners and the respondent are family members and the suit has been filed by the respondent in O.S.No.8 of 2013 for partition. Being a partition suit, the petitioners and the respondent being family members, the Trial Court has rightly rejected the application filed under Order VII Rule 11 of CPC. However, as rightly pointed out by the learned counsel for the petitioner, the second issue viz., the improper valuation of the suit has not been considered by the Trial Court while dismissing the application under Order VII Rule 11 of CPC. Since it has not been considered, the learned counsel for the petitioner seeks for a direction from this Court to grant liberty to the petitioner to raise the improper valuation of the suit as a preliminary issue in the suit.

7. This Court finds force in the submissions made by the learned counsel for the petitioner and accordingly, grants relief to the petitioner to raise the issue of improper valuation of the suit as a preliminary issue before the Trial Court. Insofar as the finding given by the Trial Court as regards, the first issue namely whether the respondent/plaintiff has got a share in the suit schedule property or not,

is a triable issue and cannot be decided under Order VII Rule 11 of CPC and the said finding is confirmed by this Court.

8. In the result, a direction is given to the Trial Court to permit the petitioner to raise the issue of improper valuation of the suit as a preliminary issue under order XIV Rule 2 of CPC before adjudication of the main suit. It is made clear that the preliminary issue can be entertained by the Trial Court only after the petitioner files a separate application for the same within a period of three weeks from the date of receipt of a copy of this Order. If no such application is filed by the petitioner within the time frame as stipulated above, the Trial Court can proceed with the suit and pass a Judgment in the suit in accordance with law.

9. With the aforesaid observations, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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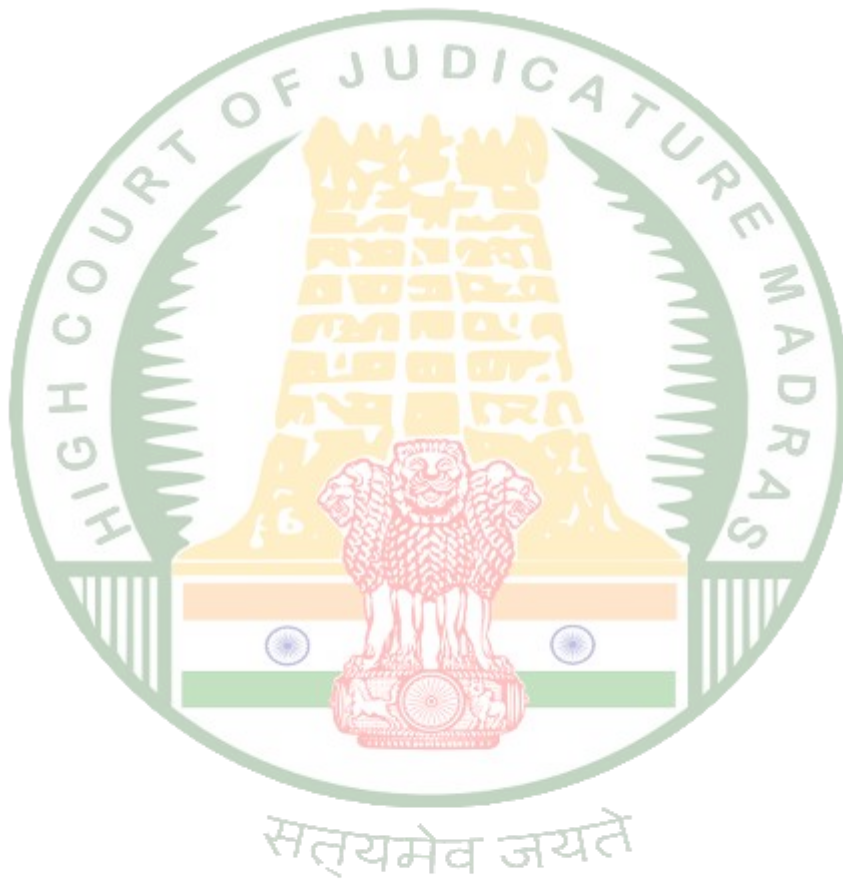
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Index: Yes/ No

Speaking Order/Non-speaking Order

To

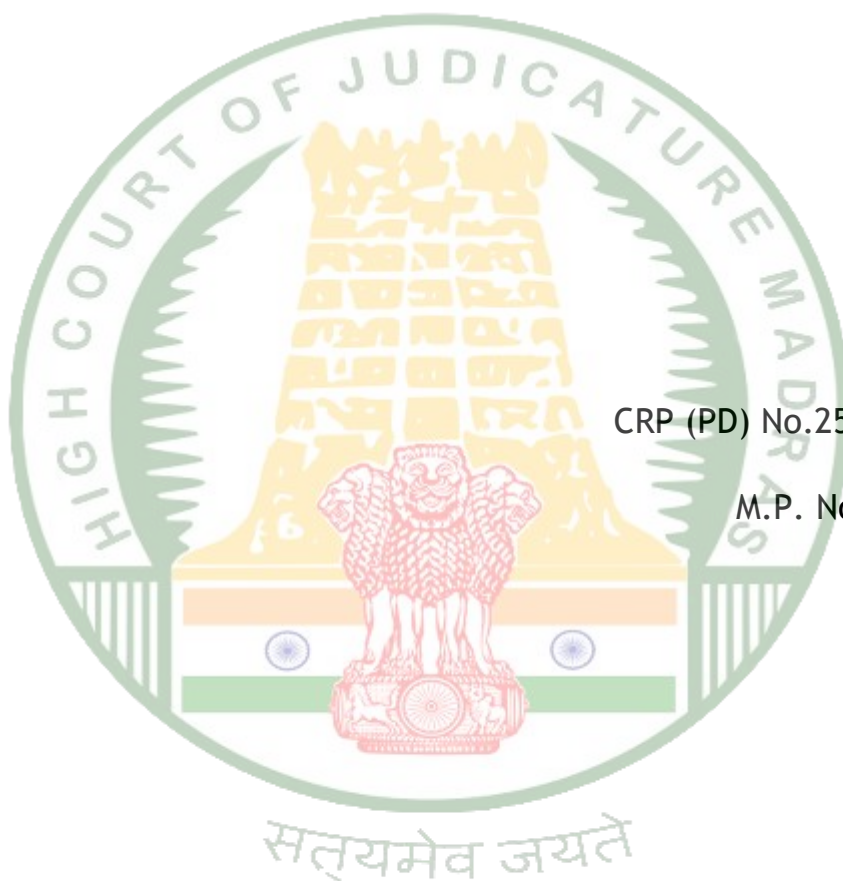
The II Additional District Judge, Salem.



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ABDUL QUDDHOSE, J.

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