

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.10.2019

PRONOUNCED ON : 08.11.2019

CORAM

THE HONOURABLE Mr. JUSTICE **R.PONGIAPPAN**

C.R.P.NPD.No.4140 of 2014
and M.P.No.1 of 2014

Kuppusamy

... Petitioner

Vs.

1. Suresh

2. Kumaravel

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the judgment and decree dated 06.02.2007 made in O.S.No.64 of 2004 on the file of the District Munsif Court, Harur, with costs.

For Petitioner : Mr.K.Krishnan

For Mr.A.Sivaji

For Respondents

For R1 : No appearance

For R2 : Mr.S.Kanniah

ORDER

Aggrieved over the judgment and decree dated 06.02.2007 made in O.S.No.64 of 2004 on the file of the District Munsif Court,

Harur, the petitioner, who is the fifth defendant in the above referred suit, filed this Civil Revision Petition.

2. Before the trial Court, the respondents 1 & 2, in this revision petition, have filed a suit in O.S.No.64 of 2004, as against the petitioner and some other persons for the relief of partition and separate possession. Since the petitioner and other defendants had not appeared in the said suit, on 06.02.2007, the learned District Munsif, Harur, passed an order of ex-parte as against the petitioner and others and thereafter, after examining the respondents/plaintiffs and marking two documents as Ex.P.1 and Ex.P.2, the learned Judge passed an exparte decree, in which the relief of partition was granted in favour of the respondents 1&2.

3. Aggrieved over the said findings, the petitioner, instead of filing an appeal, filed this Civil Revision Petition before this Court. At the time, while assigning case number to this Civil Revision Petition, the Registry had doubted about the maintainability of this revision petition and posted the case before this Court on 13.10.2014 for maintainability. Thereafter in respect of maintainability, no order has

been passed by this Court. However relying the judgment of this Court reported in **2013(1) L.W. 63** in the case of **M.Maheswari Vs. Mariappan and others**, this Civil Revision Petition was taken on file and thereafter after sending notice to the respondents, this matter is placed before this Court for final disposal.

4. In the judgment relied on by the learned counsel appearing for the petitioner, this Court has held that in the absence of detailed answer to the issues framed, the judgment rendered by the trial Court cannot be construed as a judgment. He would further submit that the typical order passed in O.S.No.64 of 2004 is nothing but mis-carriage of justice and thereby the revision is maintainable.

5. Now applying the said principles in the above referred judgment with the case under challenge in the present revision petition, in the referred case, the learned trial Judge pronounced the judgment without examining anybody and after perusing the documents had come to the conclusion that the claim made by the plaintiff has been proved. Now on going through the judgment now under challenge, it appears that after passing an order of exparte, the

respondents/plaintiffs have been examined and thereafter two documents were marked as Ex.P.1 and Ex.P.2. So only after recording the evidence of the respondents/plaintiffs, the Court below came to the conclusion that the claim made by the respondents/plaintiffs is proved. Though the said order is not clear, the same was passed after marking the documents as Ex.P.1 and Ex.P.2 and after recording the evidence from the respondents/plaintiffs. Since there was a specific provision available under the Civil Procedure Code to set aside the exparte decree, I am of the opinion that filing this revision petition to set aside the judgment is not at all maintainable. The judgment referred by the learned counsel appearing for the petitioner is entirely different with the case in our hand.

6. In the result, this Civil Revision Petition is not maintainable and accordingly the same is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

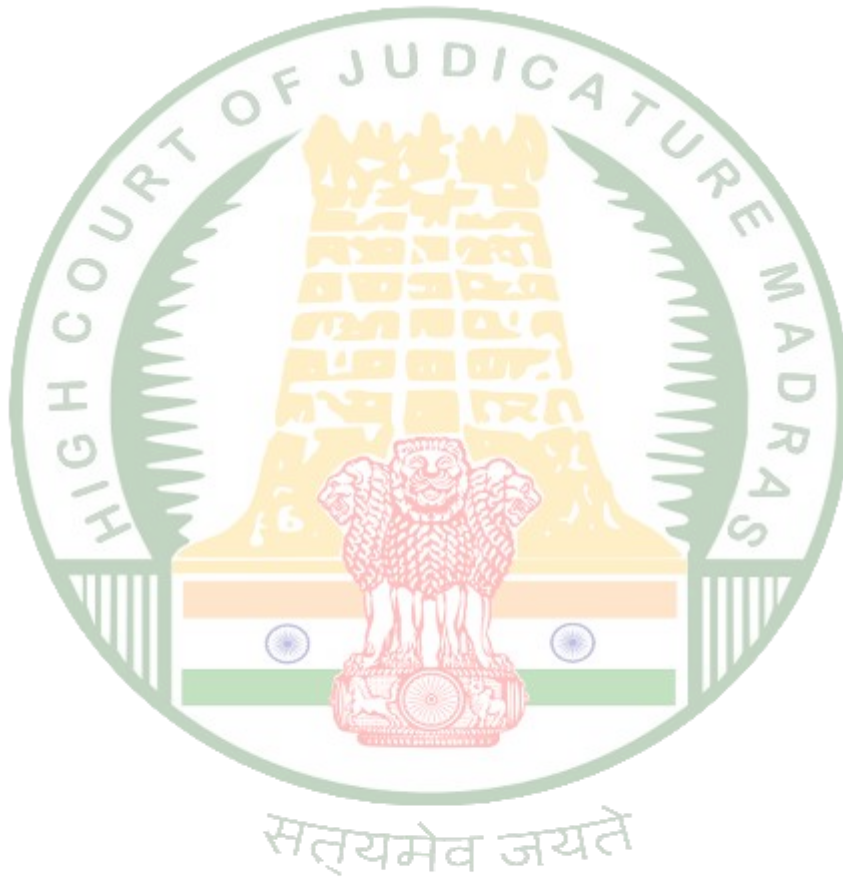
08.11.2019

Index : Yes/No

Internet : Yes/No

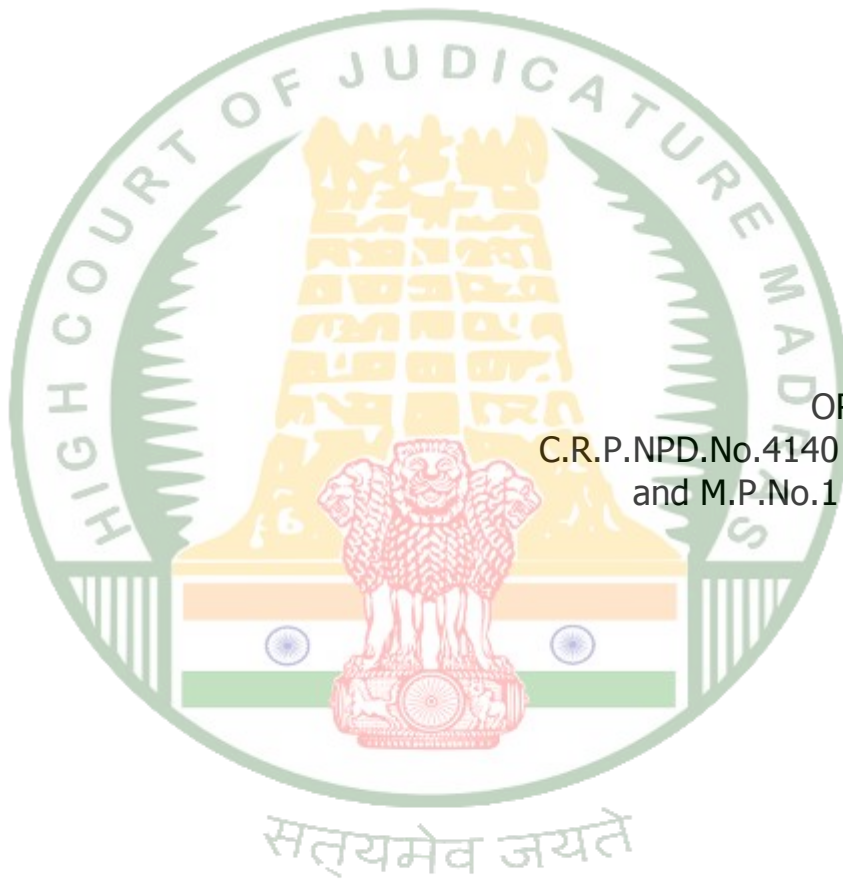
Speaking order/Non-speaking order

rts
To
The District Munsif Court,
Harur.



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R.PONGIAPPAN, J
rts



ORDER IN
C.R.P.NPD.No.4140 of 2014
and M.P.No.1 of 2014

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