

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 30.09.2019

Orders Pronounced on : 18.10.2019

CORAM

THE HON'BLE MR. JUSTICE **R.PONGIAPPAN**

CRP.NPD.No.4746 of 2014

and

M.P.No.1 of 2014

1.Dhandapani @ Ramakrishnan

2.Dhamodharan

..Petitioners

Vs.

1.Mounasamy Naicker(deceased)

2.Vijay Kumar

3.Loganathan

4.M.Pathmanaban

5.Rajammal

6.Pathmanaban

(Respondents 5 and 6 are not a necessary parties,
given up in E.P.No.134 of 2002 in O.S.No.304
of 1996 on the file of DMC. Hence,
Notice is dispense with)

(RR2 to 4 recorded as LR of the deceased R1.
Memo recorded as per order dated 14.07.2018,
vide order of court dated 24.09.2019 made in
CRP.PD.No.4746 of 2014 & M.P.No.1 of 2014
by RPAJ)

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC to set aside the fair and decretal order dated 06.11.2014 passed in EP.No.134 of 2002 in OS.No.304 of 1996 on the file of District Munsif Court, Udumalpet.

For Petitioners : Mr.A.Sivaji

For R1 to R4 : Mr.W.M.Abdul Majeed
for Mr.K.Jayaraman

For R5 and R6 : Given up

ORDER:

The defendants 9 and 10 in O.S.No.304 of 1996 on the file of the District Munsif Court, Udumalpet are the petitioners herein. Before the trial court the deceased respondent Mounasamy Naicker and others as a plaintiff filed the above referred suit, as against the petitioners herein. In the said suit they seeks the relief to frame a scheme for maintaining A to C Scheduled property since the same belongs to the trust. The learned District Munsif, Udumalpet after taking the same on file and allowed on 22.06.2000, ultimately decree has been granted in favour of the deceased, Mohanasamy Naicker and other plaintiffs. Based on the decree, the plaintiffs filed execution application in

REP.No.134 of 2002 for the direction to direct the respondents / petitioners to hand over the previous accounts related to maintaining of trust property. Since the petitioners are not followed the decree which passed in favour of the plaintiffs / respondents, the respondents herein filed a petition under Order 21 Rule 32 (1) of CPC and prays to pass an order of arrest against the petitioners and the same was ordered in his favour on 06.11.2014. Aggrieved over the same the petitioners are before this Court with this Civil Revision Petition.

2.Today when the petition is came up for hearing, the learned counsel appearing for the petitioners and the respondents are present.

3.The learned counsel appearing for the petitioners would contend that since the suit is filed under Section 92 of Code of Civil Procedure, the learned District Munsif, Udumalpet is not having any jurisdiction to try the same, and thereby the order passed in EP.No.134 of 2002 based on the said decree has also becomes not enforceable. According to him, the decree passed in O.S.No.304 of 1996 is having nullity and it cannot be enforceable.

4.On the other hand, the learned counsel appearing for the respondents would contend that already in respect to the ex-parte

order passed in the same suit by the trial court, the Civil Revision Petition has been preferred before this Court in CRP.No.975 of 2004 and the same has been disposed on 23.02.2010. Before the trial court as well as before this Court, the petitioners have not raised such plea as the District Munsif, Udumalpet is not having any jurisdiction to try the suit filed under Section 92 of C.P.C. Only after completing every proceedings, now at the stage to attain the fruits of decree, the petitioners came with the stand that the decree passed by the learned District Munsif is having the nullity.

5.The submissions made by the counsels appearing on either side are considered.

6.It is not in dispute that the suit has been filed by the plaintiffs under Section 92 of CPC, the suit has been filed for to frame the scheme for maintaining the trust property. In this regard coming to the point of jurisdiction, in the judgment of **B.D.V.Rangarathinam and others Vs. Sri Bakthositha Perumal Temple, Sholinghur and others** reported in **2004 (4) CTC 641**, this Court has held as follows:

"15. In view of the above order, giving liberty to the appellants to raise an objection regarding the jurisdiction of the District Munsif Court to deal with the suit, the submission of the leaned counsel for the respondents that

such objection was not raised initially cannot be sustained. There cannot be any doubt that the District Munsif Court has no jurisdiction, as the State Government in the Notification in G.O.Ms.No. 727, dated 8.3.1960 conferred power only on the Courts of Sub-Judges in the State of Tamil Nadu with the jurisdiction to deal with the suits relating to trusts created for public purpose of charitable or religious nature. This notification was issued exercising powers under Section 92 of the Code. The correctness and existence of the notification has not been disputed before us by the learned counsel for the respondents. Hence it is clear that the District Munsif Court, Sholinghur has no jurisdiction to deal with the suit in question. Hence, even on this ground, the suit has to be rejected."

7.Further in the judgment of **Sri Jeyaram Educational Trust and Others Vs. A.G.Syed Mohideen and Others** reported in **(2010) 2 SCC 513**, the Hon'ble Apex Court has held as follows:

"12.[Section 92](#) provides that a suit under that section can be instituted "in the Principal Civil Court of original jurisdiction or in any other court empowered in that behalf by the State Government". When it is read in a normal manner, it means that the suits under [section 92](#) should be filed in the district court or in the sub-ordinate court. When the language is clear and unambiguous and when there is no need to apply the tools of interpretation, there is no need to interpret the word 'or', nor any need to read it as a substitutive word, instead of its plain and simple meaning denoting an 'alternative'."

8.Therefore, applying the principles set out by our Hon'ble Apex Court, it is clear that the learned District Munsif Court, Udumalpet is

not having any jurisdiction to try the suit filed under the provisions of 92 C.P.C. In the said circumstances, clears the truth that the learned District Munsif, Udumalpet granted decree in favour of the plaintiffs without having any jurisdiction. In view of the above, the order dated 06.11.2014 passed in EP.No.134 of 2002 has to be necessarily interfered by this Court.

9.Hence, for the foregoing reasons stated above, the order dated 06.11.2014 passed in EP.No.134 of 2002 in OS.No.304 of 1996 on the file of District Munsif Court, Udumalpet is set aside. The petitioners are directed to raise objection before the court below within a period of two weeks from the date of receiving this order by way of filing counter. The learned District Munsif, Udumalpet on receipt of counter filed by the petitioners in respect of jurisdiction, directed to dispose the EP in accordance with law.

10.The Civil Revision Petition is disposed of accordingly. Consequently, connected miscellaneous petition is closed. No costs.

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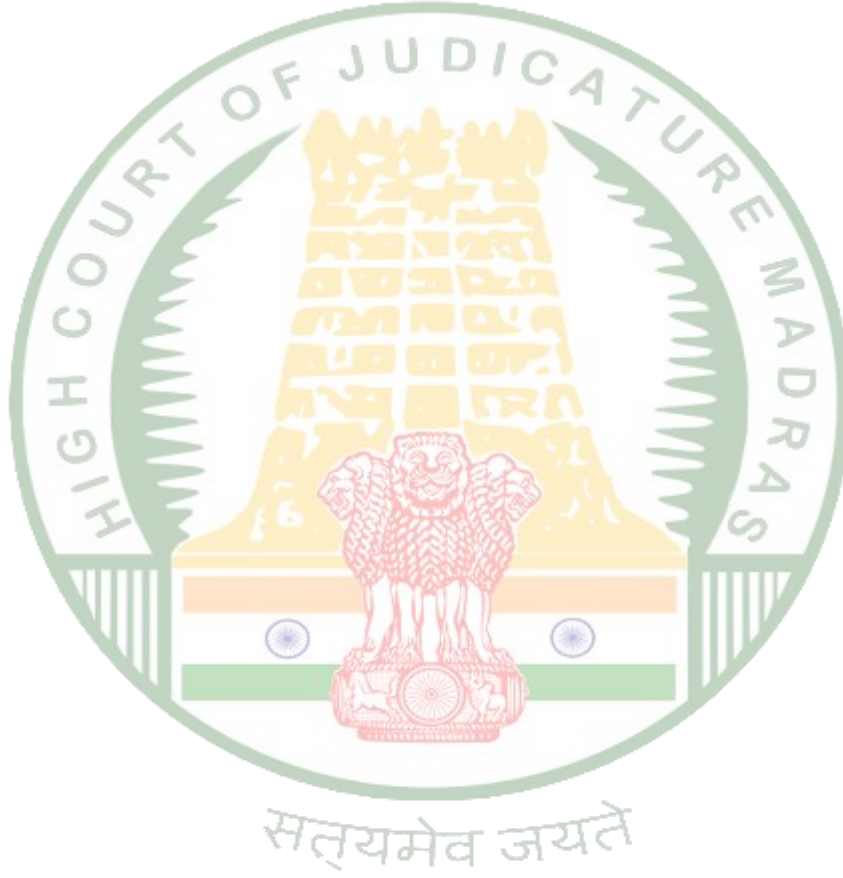
Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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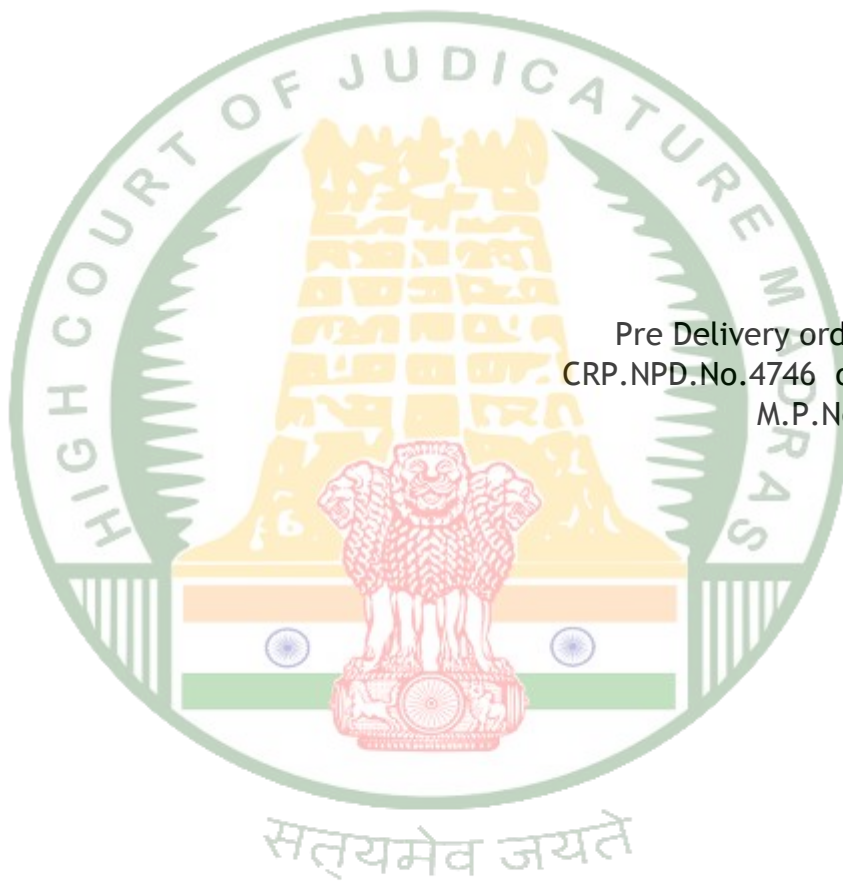
To
The learned District Munsif Court,
Udumalpet



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R.PONGIAPPAN,J.

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Pre Delivery order made in
CRP.NPD.No.4746 of 2014 and
M.P.No.1 of 2014

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