

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).Nos.3790, 3795, 3808 and 3828 of 2018
and
C.M.P.Nos.21109, 21152, 21181 and 21244 of 2018

Meenakshi Ammal Polytechnic
 a Unit of M/s.Meenakshiammal Trust,
 rep.by its Managing Trustee
 Mr.A.N.Radhakrishnan,
 S/O.Mr.Natesa Pillai,
 No.931-E, 11th Sector,
 69th Street, K.K.Nagar,
 Chennai – 600 078.

...Petitioner/Petitioner/Defendant
 in all revisions

B.Manibalan

...Respondent/Respondent/Plaintiff
 in C.R.P.(PD).No.3790 of 2018

Velayutham

...Respondent/Respondent/Plaintiff
 in C.R.P.(PD).No.3795 of 2018

Elumalai

...Respondent/Respondent/Plaintiff
 in C.R.P.(PD).No.3808 of 2018

Mani

...Respondent/Respondent/Plaintiff
 in C.R.P.(PD).No.3828 of 2018

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal order dated 25.07.2018 in I.A.Nos.197, 193, 192 and 191 of 2017 in O.S.Nos.44, 47, 46 and 45 of 2015 on the file of the learned District Munsif -cum- Judicial Magistrate, Uthiramerur.

For Petitioner : Mr.N.Kumar Rajan
in all revisions

For Respondents: Mr.R.Selvakumar
for M/s.G.Punniakoti
in all revisions

ORDER

The issues involved in all the three revisions are common and filed challenging the dismissal of applications filed by the revision petitioner/defendant for rejecting the respective suits.

2.The brief description of the Civil Revision Petitions and the corresponding interlocutory applications and suits are given as below:

C.R.P.(PD).No.3790 of 2018 arises against the order in I.A.No.197 of 2017 in O.S.No.44 of 2015. C.R.P.(PD).No.3795 of 2018 arises against the order in I.A.No.193 of 2017 in O.S.No.47 of 2015.

C.R.P.(PD).No.3808 of 2018 arises against the order in I.A.No.192 of 2017 in O.S.No.46 of 2015 and C.R.P.(PD).No.3828 of 2018 arises against the order in I.A.No.191 of 2017 in O.S.No.45 of 2015.

3.The revision petitioner seeks to reject the Plaint on the ground that they had filed an earlier suit O.S.No.1180 of 1993 against the respondents, who are the plaintiffs in four suits for a declaration that they are the absolute owners of the property and directing the defendants to hand over vacant possession of the same after removing the superstructure and for permanent injunction, restraining the defendants and their men from in any way further encroaching into the suit schedule property which is subject matter of the suit O.S.No.1180 of 1993 and the lands measuring an extent of 3.17.5 Hectares in Survey No.383/3A, Perunkozhi Village, Uthiramerur, Chengalpattu M.G.R. District.

4.The respondents had entered appearance and filed their written statement as early as in the year 1997. In fact, it is also seen that the respondents have taken out an application for appointment of an Advocate Commissioner to inspect the suit property which was

dismissed as highly belated. After contesting the suit, the respective plaintiffs did not participate in the trial and the reason assigned for non appearance is that the local Advocate has met with an accident and has become bedridden and did not appear before the Court. An *ex parte* decree came to be passed on 05.11.2004. A reading of the Judgment would show that the same is non speaking order, however, the application has been filed by the plaintiffs to set aside the *ex parte* decree within three days. Unfortunately, the same has been dismissed by the Court. Thereafter, the defendants /plaintiffs have come forward with the suits which have been detailed above for an injunction, restraining the defendants from interfering with their possession and enjoyment of the suit properties. The revision petitioner/defendant has come forward with the present application for rejecting the Plaint only on the ground of *res judicata*.

5.The Judgment in the Original Suit is a four line order which does not consider and discuss the detailed objections which have been raised by the defendants in their Written Statement in the earlier suit O.S.No.1180 of 1993. That apart, the issue involved in these suits are totally different and it was not the subject matter of the earlier suit

and that the Survey Numbers are different and the land described as tharisu promboke.

6.Be that as it may, for rejecting the Plaint, the Court is only concerned with that statements that have made in the Plaint. The respondents have in a very great detail referred to the earlier proceedings and the plaintiff have not suppressed the fact. The issue of *res judicata* involves both questions of fact as well as law. Therefore, the Plaint cannot be rejected on that ground. I find no infirmity in the order passed by the learned District Munsif -cum- Judicial Magistrate, Uthiramerur, in the various Interlocutory Applications.

Therefore, these Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/No

Internet : Yes/No

mps

To

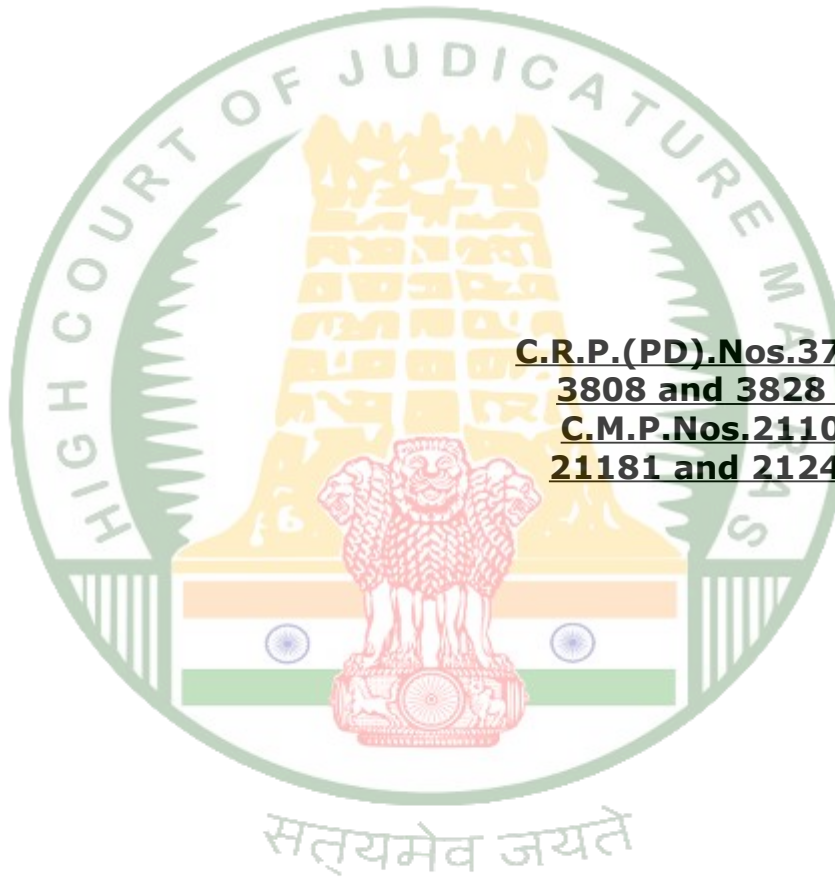
The District Munsif -cum- Judicial Magistrate,
Uthiramerur.

28.02.2019

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P.T. ASHA, J,

mps



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