

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**C.R.P(PD) No.1583 of 2014**

**and M.P.No.1 of 2014**

Palanisamy

.. Petitioner

VS

Chellammal

.. Respondent

**Prayer:** Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Order dated 20.01.2014 made in IA.No.939 of 2013 in O.S.No.403 of 2009, on the file of the Sub-court, Perundurai.

For Petitioner : Mr.V.P.Sengottuvel

**ORDER**

This Civil Revision Petition is filed to set aside the fair and decretal order dated 20.01.2014 on the file of the Sub-court, Perundurai in IA.No.939 of 2013 in OS.No.403 of 2009.

2. Heard Mr.S.V.P.Sengottuvel learned counsel for the petitioner.

There is no representation on behalf of the respondent.

3. The present Civil Revision Petition is directed against fair and decretal order dated 20.1.2014 in I.A.No. 939 of 2013. By the said order the court has dismissed the application filed by the petitioner under section 151 of CPC to scrap evidence of PW1 recorded in O.S No. 403 of 2009.

4. The said suit was filed by petitioner's sister who is the respondent in the present Civil Revision Petition. The petitioner herein had earlier filed O.S No 375 of 2009 wherein some of the defendants are the defendants in the subsequent suit filed by the petitioner's sister in O.S.No. 403 of 2009.

5. Earlier by an order dated 10.10.2011 both the suits were ordered to be tried jointly. However, O.S No. 375 of 2009 filed by the petitioner was dismissed. It was however thereafter restored on 23.8.2018.

6. Meanwhile, the Court proceeded to record evidence in O.S.No 403 of 2009 and suit was also decreed exparte. As per the averment in the I.A.No.939 of 2013, the said order was also set aside.

7. The court below has however refused to scrap the evidence as prayed for on the ground that the parties are different. I have perused the records. O.S.No of 375 of 2009 has been filed by the petitioner. O.S No. 403

of 2009 has been filed by the petitioner's sister wherein the petitioner is the 1st defendant. The two of the other defendants are the defendants in O.S No. 375 of 2009 filed by the petitioner.

8. The petitioner is the first defendant in the Subsequent Suit in O.S.No. 403 of 2009. The two other defendants, in O.S.No. 403 of 2009 are defendant Nos. 1 and 4 in O.S.No 375 of 2009. Further from the records it is evident already a joint trial was ordered on 10.10.2011. Therefore there is no justification for a separate trial merely because O.S.No.375 of 2009 was earlier dismissed and O.S.No.403 of 2009 was decreed exparte after the petitioner was set exparte. The fact remains in both the suits the statusquo ante was restored.

9. Consequently, the court below was not justified in rejecting the application for scrapping the evidence of PW1 already recorded in O.S.No.403 of 2009 and proceed with the joint trial.

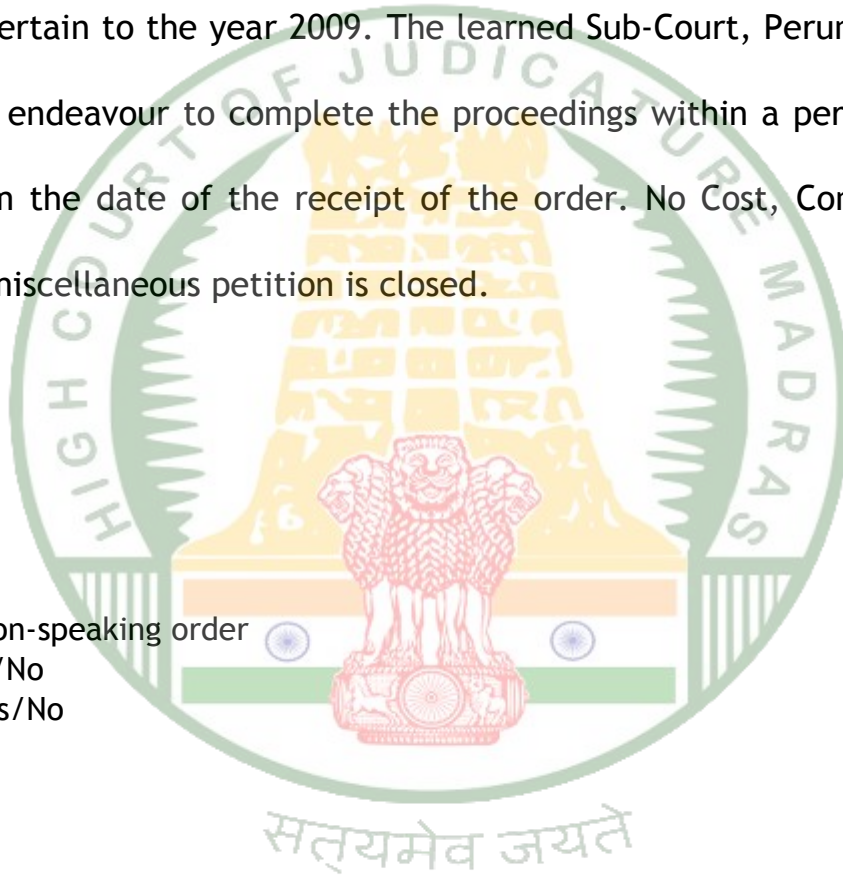
10. Further, the suit in O.S.No.403 is in respect of the same property in O.S.No.375. Therefore, this Court is inclined to interfere with the impugned order. Accordingly, the Civil Revision Petition stands allowed

and the order in I.A.No.939 of 2013 in O.S.No.403 of 2009 dated 20.01.2014 passed by the Subordinate Court,Perundurai is set aside.

11. The Court below is directed to take up the case jointly since both suits pertain to the year 2009. The learned Sub-Court, Perundurai shall make every endeavour to complete the proceedings within a period of nine months from the date of the receipt of the order. No Cost, Consequently, connected miscellaneous petition is closed.

20.03.2019

Speaking : Non-speaking order  
Index : Yes/No  
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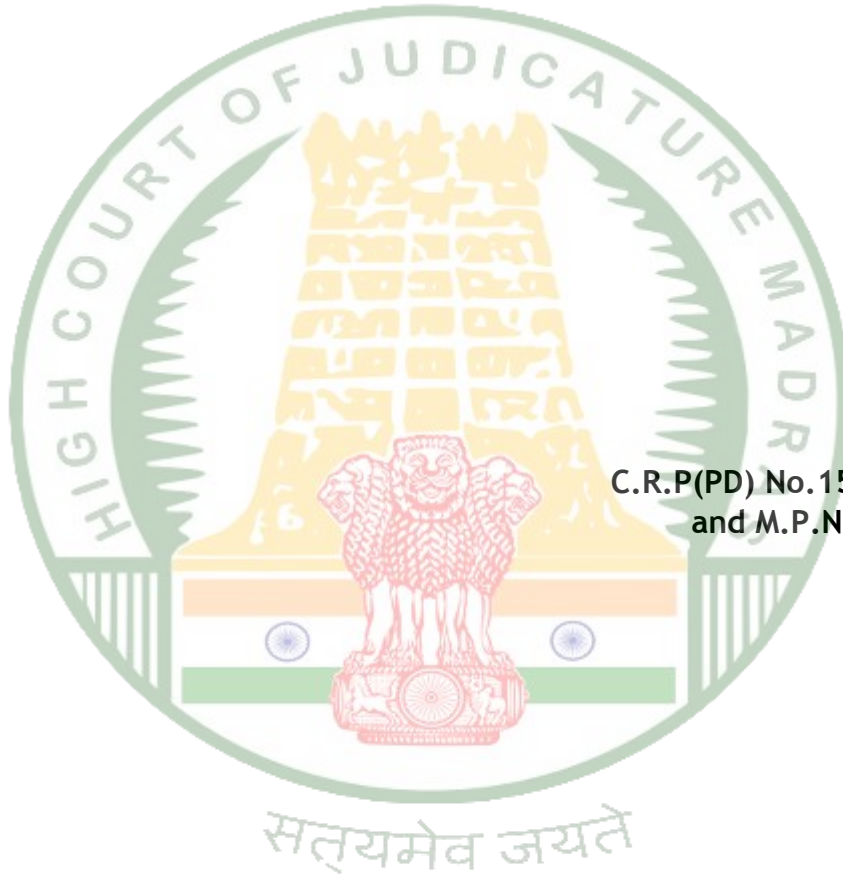


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C.SARAVANAN,J.

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To  
The Sub-Court,  
Perundurai.



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