

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2020

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD)No.455 of 2020

Anandharaj

...

Petitioner

versus

1.Rameshkumar
2.Malarkodi
3.The Sub Registrar,
O/o Sub Registrar,
Jolarpet, Vellore District.

...

Respondents

PRAYER: Civil Revision Petition is filed under Section 227 of the Constitution of India, to set aside the order dated 16.12.2019 passed in the unnumbered O.S.No.NIL of 2019 on the file of Sub Court, Tirupattur, Vellore.

For Petitioner : Mr.R.Ramesh

For RR 1&2 : Mr.D.Balachandran

For R3 : Mr.S.Pappiah
Special Government Pleader

ORDER

This Civil Revision Petition has been filed by the petitioner seeking to set aside the order dated 16.12.2019 passed in the un-numbered O.S.No.NIL of 2019 on the file of Sub Court, Tirupattur, Vellore.

2. The revision petitioner/plaintiff has filed the above said suit in O.S.No.nil of 2019 for partition against the respondents herein. The aforesaid plaint was presented before the Court below by the plaintiff, but however, the trial court has returned the said plaint. In this regard, it is worthwhile to notice a detailed order passed by this Court in the decision rendered by this Court in the case of ***S.Thiagarajan v. Supreme Pipe Syndicate through its Partners, Sajarath Thaiyaba & anr.***, reported in ***2017 (6) CTC 723***, wherein the Court below had not entertained the plaint and returned the same, only after passing the detailed order. Considering the facts and circumstances of the case, in the case on hand, the trial court has entertained the un-numbered plaint and failed to pass a detailed order. Therefore, in the light of the decision, and considering the facts and

circumstances of the case, the Court below has not passed the detailed order, in respect of the un-numbered plaint. As laid down in the above decision of this Court, an opportunity of hearing is to be granted to the petitioner/plaintiff to adjudicate upon the aforesaid plaint (un-numbered) and the same shall be posted under the caption "for maintainability of the plaint" by the Court below. Based on the re-presentation of the suit papers, the trial court has to pass the detailed order and the same cannot be numbered by the Court below if the same is not otherwise in order and the Court below has to satisfy itself in entertaining the suit in the maintainability stage of the suit and only after due satisfaction and that too, if it is in order, the plaint shall be numbered. If any dispute arises for the jurisdiction of the maintainability of the suit, the same shall be dealt with and decided by the Court below only after giving an opportunity of hearing to the petitioner and the same shall be decided by the court below, as the impugned order is passed without giving an opportunity to the petitioner/plaintiff.

3. The learned counsel for the respondents submitted that the Court below had given sufficient opportunities to the petitioner and also on re-

presentation of the plaint and that the plaint is not maintainable after giving an opportunity granted to the petitioner and pass appropriate orders for the representation made by the revision petitioner.

4. In the light of the aforesaid submissions, the order passed by the Court below is liable to be set aside. Accordingly, the same is set aside and the trial Court is directed to number the plaint, if it is otherwise in order. If the aforesaid plaint is not maintainable, the Court below has to return the plaint after giving an opportunity to the revision petitioner/plaintiff, if any dispute arises with regard to the jurisdiction of the trial Court to entertain the suit and if the plaint is filed out of the jurisdiction of the Court below, the same shall be returned to the plaintiff. The Court below has to either to return the plaint or number it and take on file and decide the maintainability of the suit, but without adopting the said course and without following the proper procedures, the trial Court had passed the order on the unnumbered plaint, in view of the above said decision of this Court, the said order is unsustainable in law.

5. For the reasons stated above, the impugned order passed in the above un-numbered suit is set aside and the trial court is directed to proceed based on the above direction and also taking into account the above quoted decision of this Court. Either way, it has to be returned if it is not in order, or number the plaint, if it is in order. The impugned order passed by the Court below in the unnumbered plaint is not sustainable. Accordingly, the same is set aside. The Court below is directed to consider the un-numbered plaint submitted by the petitioner before the Court below and to take appropriate decision in the aforesaid unnumbered plaint and pass appropriate orders on merits and in accordance with law, as expeditiously as possible, at any rate, within a period of four weeks from the date of receipt of a copy of this order.

6. With the above directions, the Civil Revision Petition is disposed of . No costs.

17.03.2020

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

msm

To

1. The Subordinate Judge, Tirupattur, Vellore.
2. The Sub Registrar, O/o Sub Registrar,
Jolarpet, Vellore District.

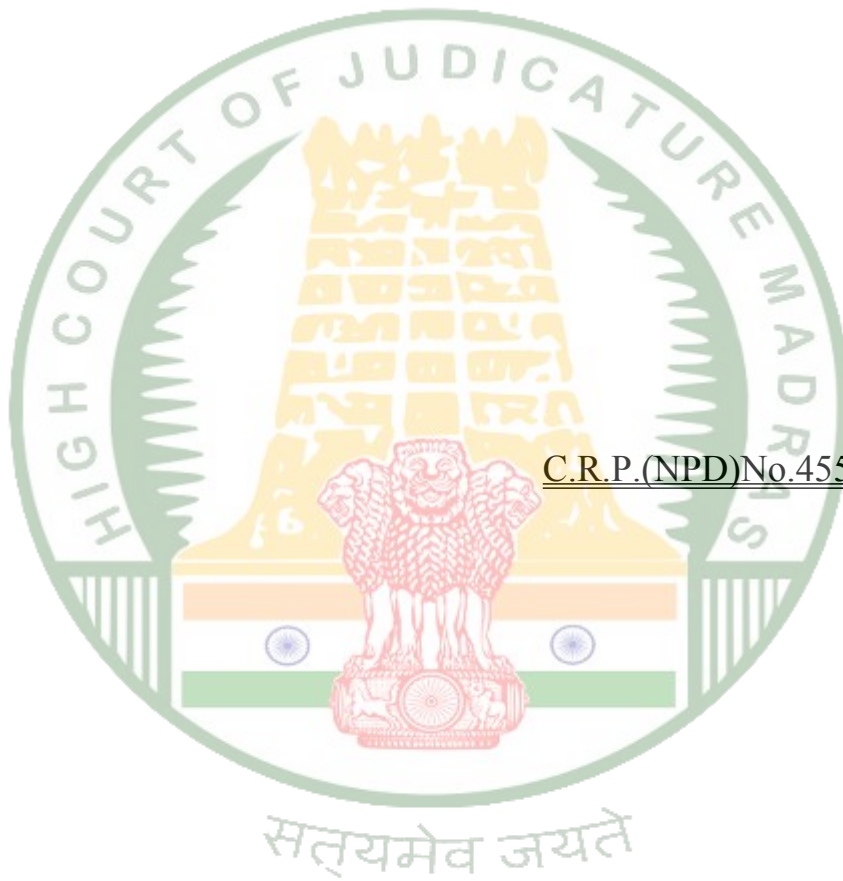


WEB COPY

C.R.P.(NPD)No.455 of 2020

D.KRISHNAKUMAR, J.

msm



C.R.P.(NPD)No.455 of 2020

WEB COPY

17.03.2020