

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P.NPD 636 of 2020

and

C.M.P. 3305 of 2020

1. S.Myilsamy
rep. by power agent
S.Jeganathan.

2. S.Jeganathan

... Petitioners

Versus

1. State of Tamil Nadu,
rep. by the District Collector,
Erode District,
Collectorate, Erode-11.

2. The District Revenue Officer,
Collectorate, Erode-11.

3. The Tahsildar,
Erode Taluk, Erode-1.

4. Chellakumarasamy

... Respondents

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the fair and final order dated 21.08.2018 passed in I.A. 60 of 2015 in A.S. 61 of 2014 on the file of Subordinate Court, Erode.

For Petitioner : Sri Titus Enoc

For Respondents : Mr.S.Kaithamalai Kumaran

ORDER

This Civil Revision Petition has been filed against the order dismissing the petitioner's application to amend the plaint in the appeal stage. .

2. The petitioners are the plaintiffs. They have filed a suit for declaration declaring that, they are the absolute owners of suit property pursuant to the Will dated 05.12.1998 executed by one Kaliasammal, also seeking a direction to defendants 1 to 3 to remove the name of Saraswathi from the revenue records, and also restrain the 4th defendant from seeking patta. The above suit was partly decreed, declaring the 2nd plaintiff as absolute owner of suit property except the house bearing New Door No.338, Old No.256, Mullamparappu situate in R.S. No.507/8A of 46-Pudhur B Village, Erode Taluk, and also granted mandatory injunction. Challenging the judgment and decree, the 4th defendant has filed an appeal. The suit has been filed in the year 2014, and the appeal was also filed in the same year. Thereafter, the petitioners have filed the present application to amend the plaint

seeking for recovery of possession in respect of the house situated in R.S. 507/8A. That application came to be dismissed. Challenging the same, the present Civil Revision Petition has been filed.

3. I have considered the submissions made by learned counsel appearing for petitioners as well as learned counsel appearing for respondents and perused the records carefully.

4. Originally, the suit was filed for declaration, and also for mandatory injunction, but no relief for possession was sought for. Thereafter, the suit was decreed partly. Challenging the same, the 4th defendant has filed an appeal. Pending appeal, the petitioners have sought to amend the plaint seeking for recovery of possession, that was rejected by the appellate court. On perusal of affidavit filed by the petitioners, absolutely, there is no reasons stated as to why the relief of possession has been sought in the Appeal Suit. That apart, from perusal of the order passed by the court below, it could be seen that, for more than 10 months, neither the petitioners nor their counsel appeared for enquiry. In the above circumstances, the lower appellate court has rightly dismissed the application. I find no illegality or

irregularity in the order passed by the court below, and I find no merit in this Civil Revision Petition. Accordingly, this Civil Revision Petition stands dismissed. However, considering the fact that, the appeal is pending from the year 2014, the lower appellate court is directed to dispose the appeal within a period of three months from the date of receipt of copy of this order. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

19.02.2020

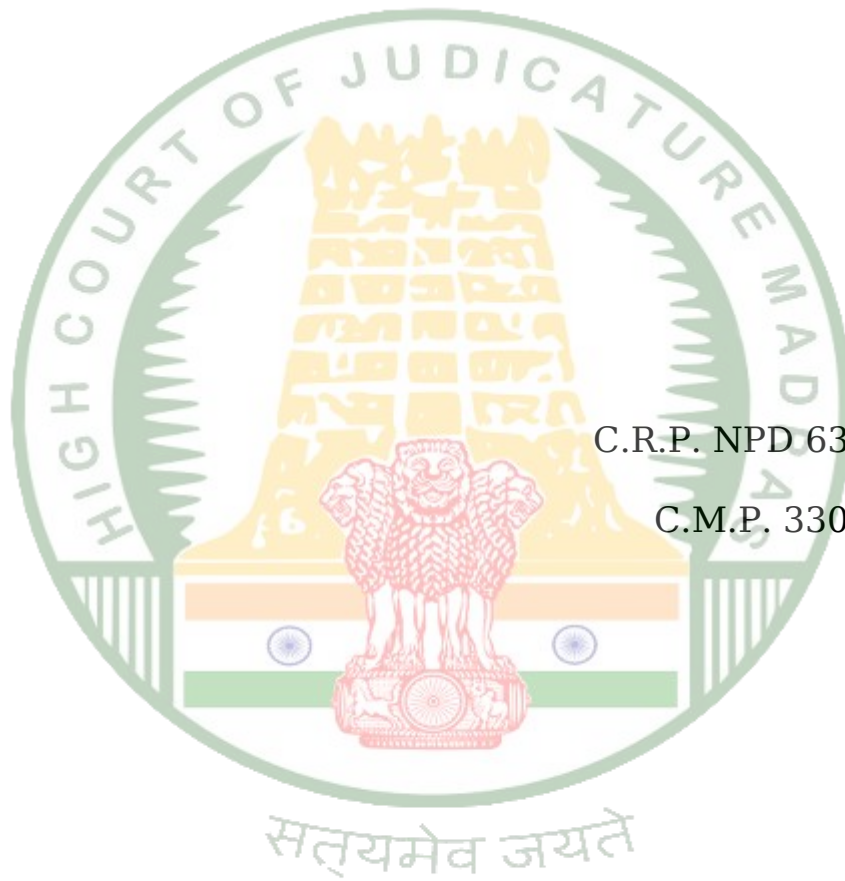
Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

1. Principal Subordinate Judge, Erode.
2. The District Collector,
State of Tamil Nadu,
Erode District, Collectorate, Erode-11.
3. The District Revenue Officer,
Collectorate, Erode-11.
4. The Tahsildar, Erode Taluk,
Erode-1.

V.BHARATHIDASAN,J.

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