

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).No.1875 of 2015

and

M.P.No.1 of 2015

1.N.M.Duraisamy
2.Valarmathi
3.Sudhamani

... Petitioners

Vs.

1.Ramasamy
2.Manjula

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order of the District Munsif Court, Gobichettipalayam, dated 16.04.2015 in I.A.No.236 of 2015 in O.S.No.13 of 2015.

For Petitioners : Mr.P.Valliappan

For Respondents : Mr.J.Muthukumaran

ORDER

This Civil Revision Petition has been filed by the petitioners/defendants 1, 2 and 4 against the dismissal of their application in I.A.No.236 of 2015 in O.S.No.13 of 2015 on the file of the District Munsif, Gobichettipalayam dated 16.04.2015.

2. The respondents herein had filed a suit in O.S.No.13 of 2015 on the file of the District Munsif, Gobichettipalayam, for the relief of permanent injunction restraining the defendants therein from interfering with their peaceful possession and enjoyment of the suit property. During pendency of the said suit, the defendants 1, 2 and 4 filed an application under Order 7 Rule 11 (a) (b) and Section 151 of CPC (I.A.No.236 of 2015) to reject the plaint. The learned District Munsif, by the order dated 16.04.2015 had dismissed the said application. Feeling aggrieved, the petitioners have filed the present Civil Revision Petition.

3. Heard Mr.P.Valliappan, the learned counsel for the petitioners and Mr.J.Muthukumaran, the learned counsel for the respondents.

4. The learned counsel for the petitioners has submitted that the petitioners herein had filed an application in I.A.No.236 of 2015 in O.S.No.13 of 2015 to reject the plaint on the ground that already the petitioners herein had filed a suit in O.S.No.38 of 2008 for the relief of declaration and permanent injunction and the said suit was dismissed. As against the same, the petitioners herein had filed an appeal in A.S.No.17 of 2011 on the file of the Sub-Court, Gobichettipalayam and the same was allowed and hence, the present suit is not maintainable. He further submitted that the learned District Munsif had dismissed the said petition. As against the same, the petitioners have filed the present Civil Revision Petition.

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5. He further submitted that during pendency of this Civil Revision Petition, the respondents herein have filed a Second Appeal in S.A.No.378 of 2015 before this Court and the same was allowed. As against the same, the petitioners herein are taking steps for filing SLP

before the Hon'ble Supreme Court. Under the said circumstances, he prays to pass an appropriate order in this Civil Revision Petition.

6. Per contra, the learned counsel for the respondents has submitted that since the Second Appeal in S.A.No.378 of 2015 which has been filed by the respondents has been allowed by this Court, the petitioners cannot take shelter under the decree which was passed in A.S.No.17 of 2011 in their favour and therefore, he prayed to dismiss the Civil Revision Petition.

7. Admittedly, the petitioners herein had filed an application in I.A.No.236 of 2015 in O.S.No.13 of 2015 to reject the plaint on the ground that they already got a decree in their favour in A.S.No.17 of 2011. Subsequently, the respondents herein have filed a Second Appeal in S.A.No.378 of 2015 before this Court against the judgment and decree passed in A.S.No.17 of 2011 and the said Second Appeal has been allowed by this Court. Under the said circumstances, this Court is of the view that the petition which has been filed by the petitioners to reject the plaint is not maintainable and therefore, this Civil Revision Petition has to be dismissed.

8. In the result, this Civil Revision Petition stands dismissed. It is open to the parties to take all the pleas which are available under the law, before the trial Court in the main suit. No costs. Consequently, connected Miscellaneous Petition is also closed.

03.11.2020

Internet : Yes/No
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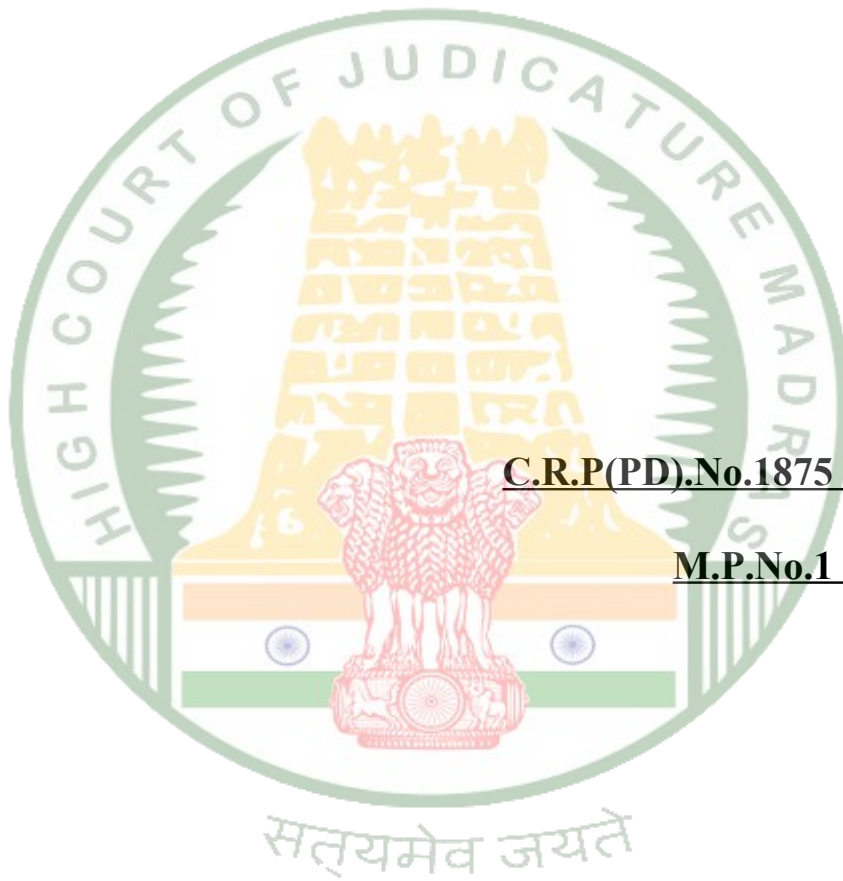
- 1.The Sub-Court, Gobichettipalayam.
- 2.The District Munsif Court, Gobichettipalayam.



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CRP (PD).No.1875 of 2015

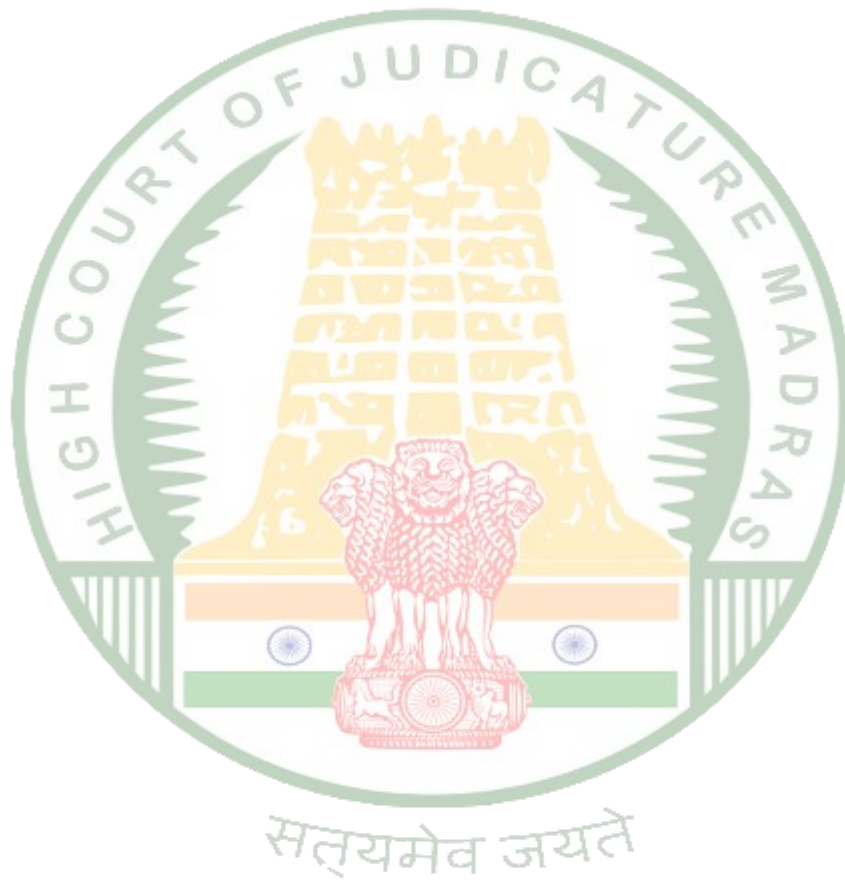
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