

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).No.4743 of 2015
and
M.P.No.1 of 2015

R.Kalaiselvan ... Petitioner

Vs.

D.Velu ... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the return endorsement dated 25.02.2015 made in I.A.SR.No.11260 of 2014 in I.A.No.1255 of 2012 in O.S.No.364 of 2012 Subordinate Judge, Tambaram.

For Petitioner : Mr.N.Suresh
For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed by the petitioner/third party against the order passed by the Sub-Judge, Tambaram, in I.A.SR.No.11260 of 2014 in I.A.No.1255 of 2012 in O.S.No.364 of 2012 dated 25.02.2015.

2. The petitioner herein had filed an application in I.A.SR.No.11260 of 2014 in I.A.No.1255 of 2012 in O.S.No.364 of 2012 on the file of the Sub-Judge, Tambaram, under Order 1 Rule 10(2) of CPC, to implead him as second respondent in I.A.No.1255 of 2012 and as second defendant in O.S.No.364 of 2012. The learned Sub-Judge, Tambaram, has returned the said application by the order dated 25.02.2015 stating that no suit and IA are pending before the Court. Feeling aggrieved, the petitioner/third party has filed the present Civil Revision Petition.

3. In the last hearing i.e., on 06.11.2020, there was no representation for the respondent and hence the matter has been posted today under the caption “for orders.” Today, the learned counsel for the petitioner appeared through Video Conferencing, but there is no representation for the respondent. Hence, after hearing the arguments of the learned counsel for the petitioner and perusing the materials filed along with this petition, order is being passed in this petition.

4. A perusal of the typed set of papers filed by the petitioner shows that the respondent herein had filed a suit in O.S.No.364 of 2012 on the file of the Sub-Judge, Tambaram, against one Yashotha for recovery of Rs.4,24,000/- with subsequent interest and also filed an application in I.A.No.1255 of 2012 under Order 38 Rule 5 of CPC, seeking attachment before the judgment of the petition mentioned property. In the said I.A.No.1255 of 2012, attachment before the judgment was ordered and accordingly, attachment also has been effected and thereafter the said I.A. has been closed.

5. In the suit, it appears that the defendant therein has not appeared and hence, an ex parte decree was passed. Thereafter, the petitioner herein had filed an application in I.A.SR.No.11260 of 2014 under Order 1 Rule 10(2) of CPC, seeking to implead him as second respondent in I.A.No.1255 of 2012 and as second defendant in the said suit. The learned Sub-Judge, had returned the said application by saying that already the application in I.A.No.1255 of 2012 and also the suit in O.S.No.364 of 2012 were disposed of and as such, how the said application is maintainable. Feeling aggrieved by the said order, the petitioner has filed the present Civil Revision Petition.

6. According to the petitioner, he is the absolute owner of the property which has been attached in I.A.No.1255 of 2012 in O.S.No.364 of 2012 and in such a case, he has to file a claim petition by invoking the provisions under Order 38 Rule 8 of CPC and instead of that, he cannot file a petition to implead him as a party in the suit and also in the Interlocutory Application which were already disposed of. Therefore, this Civil Revision Petition is not maintainable and the same has to be dismissed.

7. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed. It is open to the petitioner to file a claim petition by invoking the provision under Order 38 Rule 8 of CPC.

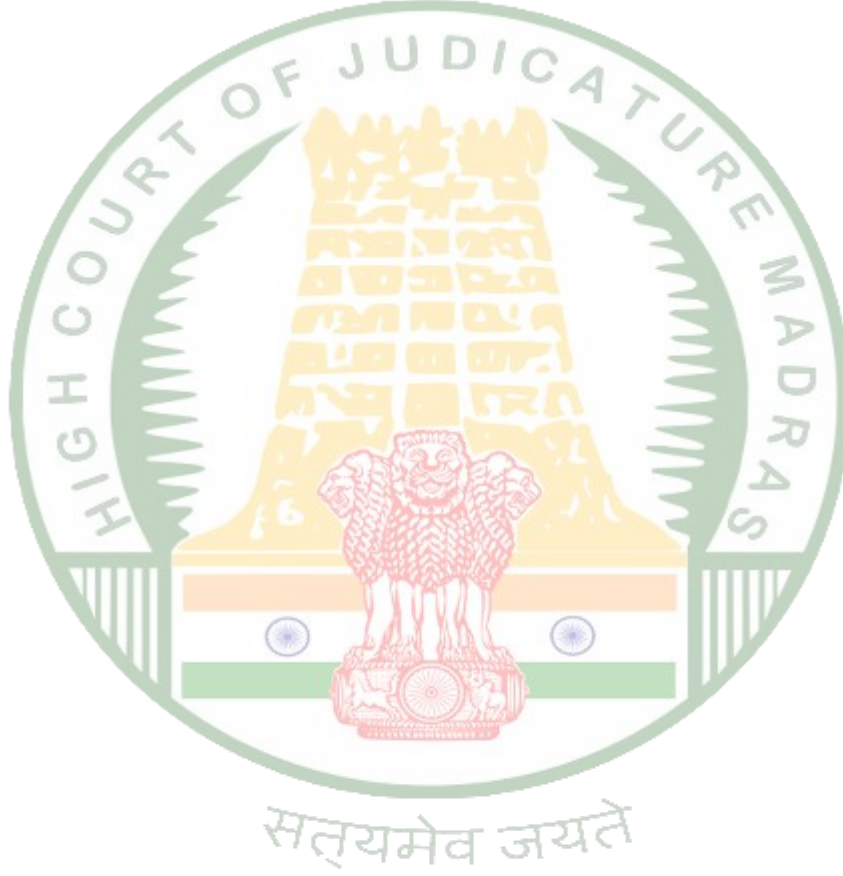
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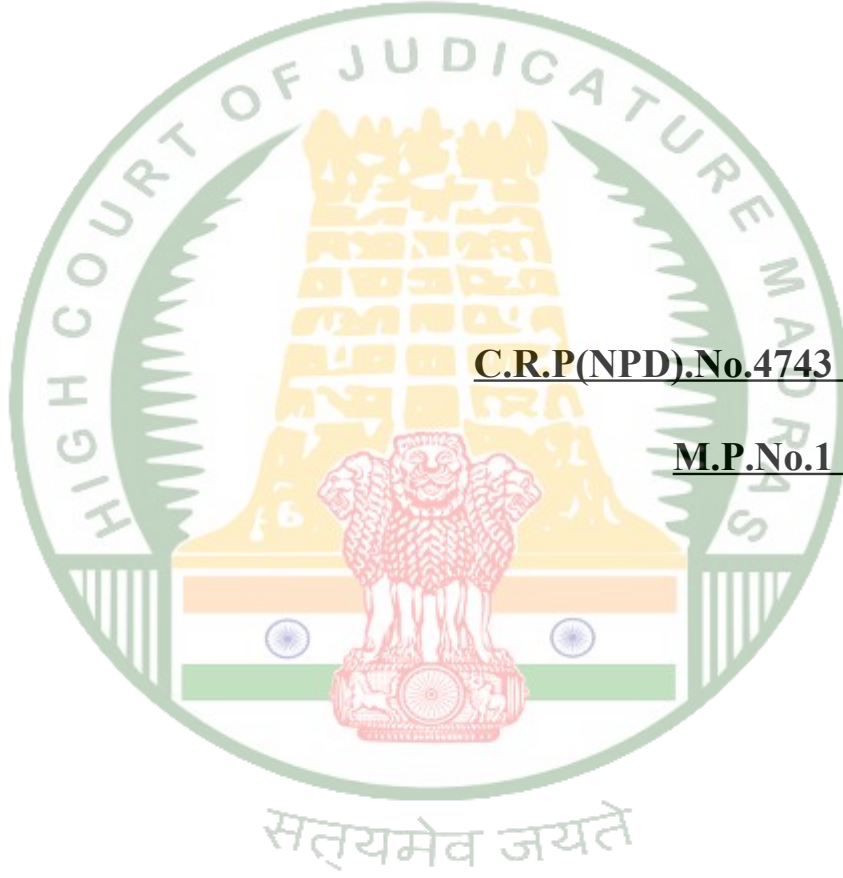
The learned Sub-Court, Tambaram.



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