

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).No.3764 of 2013

and

M.P.No.1 of 2013

Subramani @ Mani

... Petitioner

Vs.

Veerappan

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order passed by the learned District Munsif at Perambalur in I.A.No.1779 of 2012 in O.S.No.72 of 1999 dated 24.11.2012.

For Petitioner : Mr.G.Ilamurugu

For Respondent : No Appearance

ORDER

This Civil Revision Petition has been filed by the petitioner/first defendant against the dismissal of his application in I.A.No.1779 of 2012

in O.S.No.72 of 1999 on the file of the District Munsif, Perambalur dated 24.11.2012.

2. The petitioner herein has filed an application under Section 151 of CPC in I.A.No.1779 of 2012 on the file of the District Munsif, Perambalur to try the suit in O.S.No.72 of 1999 along with O.S.No.388 of 2008 (Joint Trial). The learned District Munsif by the order dated 24.11.2012 has dismissed the said application. Feeling aggrieved, the petitioner/first defendant has filed the present Civil Revision Petition.

3. Though notice was served on the respondent and his name was also printed in the cause list, he has not appeared either in person or through counsel. Hence, after hearing the arguments of the learned counsel for the petitioner and perusing the materials available on record, Order is being passed in this petition.

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4. The learned counsel for the petitioner has submitted that the respondent has filed a suit in O.S.No.72 of 1999 on the file of the District Munsif, Perambalur for the relief of partition and separate possession. He further submitted that in the said suit, the petitioner herein after receipt of

summons entered appearance through counsel and also filed a written statement stating that the respondent has purposely omitted to include certain properties and hence, the suit is barred for partial partition and thereafter, in the year 2008, the respondent has filed another suit in O.S.No.388 of 2008 stating that the properties mentioned in the said suit absolutely belong to him and he prayed to grant for permanent injunction restraining the petitioner herein and others from interfering with the peaceful possession and enjoyment of the properties. He further submitted that the properties mentioned in O.S.No.388 of 2008 also should be included in O.S.No.72 of 1999, but the respondent has not added those properties. He further submitted that since the issue as to whether the suit in O.S.No.72 of 1999 is bad for partial partition for non-inclusion of the properties mentioned in OS.No.388 of 2008 has to be tried, the petitioner has filed an application in I.A.No.1779 of 2012 seeking joint trial of both the suits, but, the trial court has erroneously dismissed the said application. He further submitted that in both the suits, the parties are the same and the defence taken in both the suits also one and the same and in such a case, the trial court ought to have ordered for joint trial, so that, conflict of decisions could be avoided and therefore he prayed to allow the Civil Revision Petition and allow the IA.No.1779 of

2012 and order for joint trial of the suit in O.S.No.72 of 1999 along with O.S.No.388 of 2008.

5. A perusal of typed set of papers filed by the petitioner shows that the respondent has filed a suit in O.S.No.72 of 1999 on the file of the District Munsif, Perambalur for the relief of partition and separate possession. In the said suit, the petitioner herein was shown as first defendant. The petitioner herein filed a written statement in the said suit stating that the respondent herein has purposely omitted to include certain properties in the suit and the said suit is bad for partial partition. After nearly nine years, the respondent has filed another suit in O.S.No.388 of 2008 stating that he is having absolute right over the properties mentioned in the said suit in which the petitioner herein and others are not having any right and hence, prayed to grant permanent injunction restraining the petitioner herein and others from interfering with the peaceful possession and enjoyment of the property. So it appears that both the suits are interlinked and in order to avoid conflict of decisions, the trial court should have allowed the application filed by the petitioner for joint trial of both the suits, but, it has erroneously dismissed the said application. Hence, the order passed by the District

Munsif, Perambalur is liable to be set aside.

6. In the result, this Civil Revision Petition is allowed. The order passed in I.A.No.1779 of 2012 in O.S.No.72 of 1999 on the file of the District Munsif, Perambalur dated 24.11.2012 is set aside. The trial court is directed to conduct a joint trial in both the suits namey O.S.No.72 of 1999 and O.S.No.388 of 2008 and dispose of the same by a common judgment. No costs. Consequently, connected miscellaneous petition is closed.

02.11.2020

Vv

Index :Yes/No

Internet : Yes/No

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To

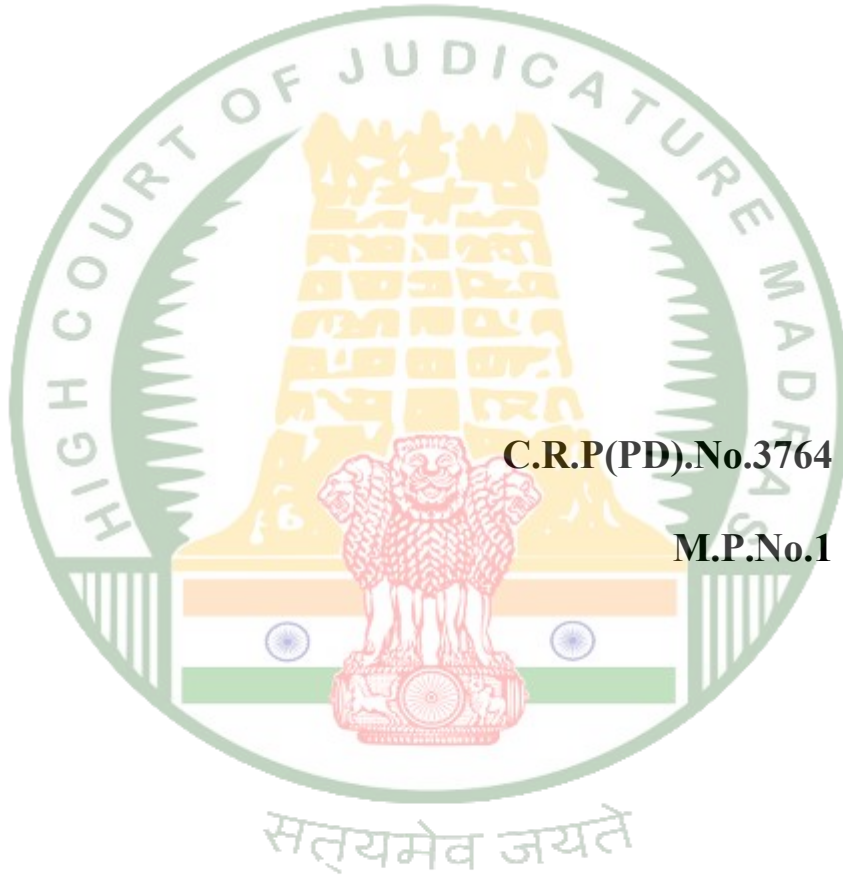
The District Munsif,
Perambalur.

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