

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2020

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD)No.973 of 2020
and C.M.P.No.5291 of 2020

V.Saritha

...

Petitioner

versus

R.Rengaraj

...

Respondent

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to direct the Principal District Munsif at Mailadudurai to taken on file and number the unnumbered E.A.Sr.No.910 of 2020 returned on 28.02.2020 in E.A.No.144 of 2002 in E.P.No.85 of 2001 on the file of Principal District Munsif at Mailadudurai.

For Petitioner

सत्यमेव जयते
Mr.C.B.Muralikrishnan

ORDER

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This Civil Revision Petition has been filed to direct the learned Principal District Munsif, Mailadudurai, to take on file and number the unnumbered E.A.Sr.No.910 of 2020, returned on 28.02.2020 in E.A.No.144 of 2002 in

E.P.No.85 of 2001 on the file of Principal District Munsif, Mailadudurai.

2. The respondent herein has filed R.C.O.P.No.1 of 1997 to vacate one Vethaiyan from the petition premises which belongs to him and the same was decreed in favour of the respondent. Pursuant to the decree passed in R.C.O.P.No.1 of 1997, the respondent has filed E.P.No.85 of 2001 for execution of the decree and the same is pending before the Additional District Munsif Court, Mailadudurai. At this stage, the petitioner has filed a suit in O.S.No.344 of 1999 for declaration and permanent injunction against the respondent herein and the suit was decreed in favour of the petitioner / plaintiff, by judgment dated 25.06.2001. Based on the judgment and decree in the aforesaid suit, the petitioner has also filed an application in E.A.No.144 of 2002 under Order 21 Rule 9 of CPC for dismissal of the E.P. proceedings in E.P.No.85 of 2001 and the same was dismissed by the Execution Court. Now, the petitioner has filed the instant application and the same was returned by the Court below in E.A.Sr.No.910 of 2020. Hence, the petitioner has preferred the present Civil revision petition before this Court seeking direction to the Court below to number the application.

3. The learned counsel for the petitioner submitted that the reason as stated in the application to return the application filed in E.A.Sr.No.910 of 2020 is improper and the application was returned without proper verification and not on merits. Without deciding the said application, order cannot be passed in E.P. proceedings. Therefore, the application is maintainable on merits.

4. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

5. Admittedly, the petitioner preferred an appeal in E.A.No.144 of 2002 against the E.P. proceedings in E.P.No.85 of 2001, which was dismissed by the appellate Court. Challenging the dismissal order passed by the lower appellate Court, the petitioner has preferred an appeal in C.M.S.A.No.10 of 2001 and the same was dismissed by this Court on 19.06.2019. According to the learned counsel appearing for the petitioner, she has filed a Review Application along with condone delay application and the same was listed before the concerned Court. At this juncture, the petitioner has filed the instant application before the

Execution Court for stay of the E.P. proceedings. The Court below has rightly returned the said application by stating that an appeal filed in E.A.No.144 of 2002 was already dismissed and appeal filed in C.M.S.A.No.10 of 2001 was also dismissed by this Court. Therefore, the reason stated in the execution application to stay the execution proceedings till the disposal of the review application cannot be granted and as such, the relief as prayed for in the Civil revision petition cannot be granted. Further, according to the petitioner, review application filed by the petitioner is pending before this Court and therefore, this Court is refrained to entertain the present C.R.P. and it is for the petitioner to work out her remedy in the review application, if so aggrieved. Therefore, the Civil revision petition fails for devoid of merit.

6. Accordingly, the Civil Revision Petition stands dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

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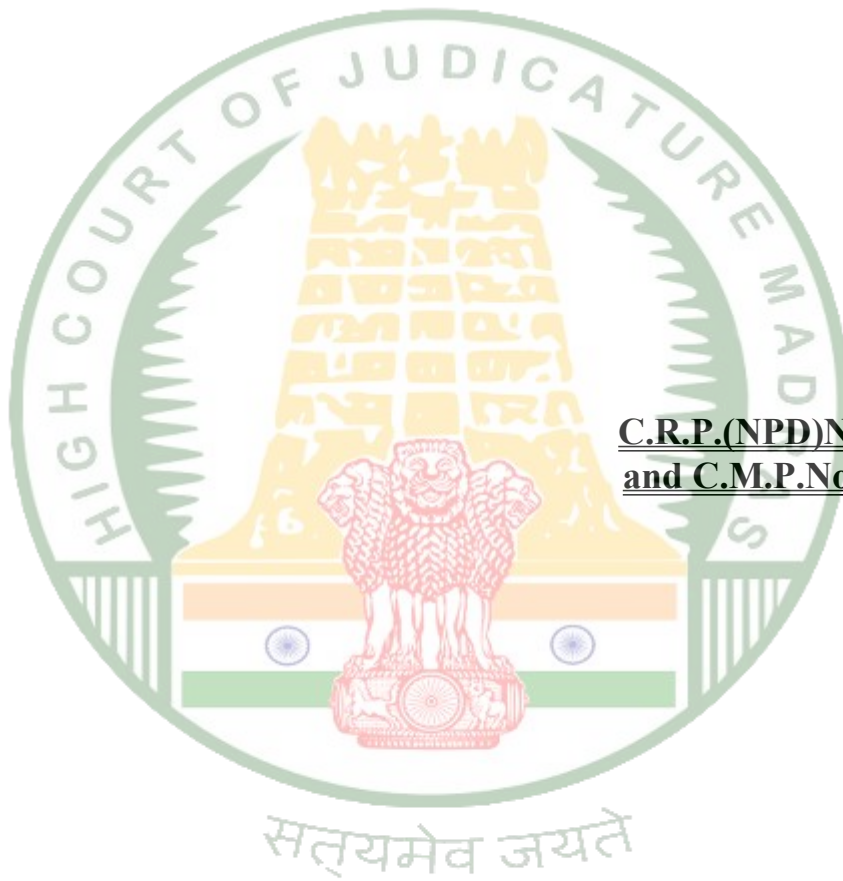
To
The Principal District Munsif, Mailadudurai.



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D.KRISHNAKUMAR, J.

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