

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD). No.67 of 2018

Indira

.. Petitioner

Vs.

1. Deiyvanayagi
2. Elumalai
3. Muruganandam

... Respondents

Prayer: The Civil Revision petition filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order dated 22.09.2017 passed in E.P.No.39 of 2012 in O.S.No.937 of 2005 by the Principal District Munsif Court, Poonamallee.

For Petitioner : Mr.S.Mohan

For Respondents : Mr.Vijayakumar

ORDER

Aggrieved by a totally erroneous order of the learned District Munsif made in Execution proceedings, the Decree holder has come up with this revision.

2. A suit in O.S.No.937 of 2005 was filed by the petitioner seeking recovery of possession of the property, subject matter of the said suit. The suit was decreed, of course exparte, on 10.11.2008. The Decree reads as follows:

- 1. that the defendants are directed to hand over and deliver vacant possession to the plaintiff after removing the constructions if any in the suit property and*
- 2. That the defendants do pay to plaintiff a sum of Rs.2330.50/- being the cost of the suit (Cost Memo not filed)*

3. This decree was sought to be executed in E.P.No.39 of 2012. The respondent filed a counter stating that the suit property is a Poramboke land and the Government is the paramount title holder. It is also claimed that they have filed applications to have the exparte decree set aside. The learned District Munsif held that the E.P. itself is not maintainable since the

property is not in possession of the decree holder. The learned Munsif has also observed that the decree holder, having pleaded that she is in possession of the suit property in the original suit, is now seeking to execute the decree for possession.

4. These observations of the learned District Munsif is totally erroneous and against the very decree granted. This shows total non application of mind on the part of the learned District Munsif. I have extracted the decree above. It is a decree for delivery of possession. The duty of the Executing Court is to execute the decree as it stands.

5. Therefore, the order of the learned District Munsif is liable to be set aside and it is accordingly set aside. The Civil Revision petition is allowed. The E.P No.39 of 2012 is restored and remitted to the Executing Court namely the Principal District Munsif Court, Poonamallee to be proceeded in accordance with law. This order, however will not stand in

R.SUBRAMANIAN, J.

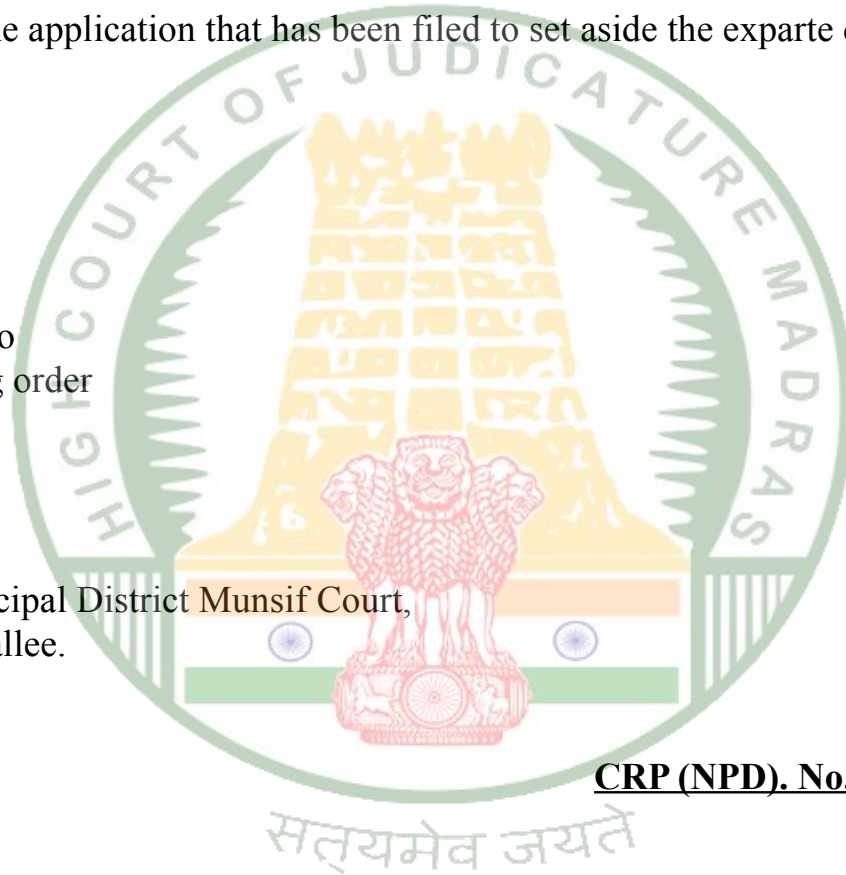
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the way of the Judgment Debtor seeking appropriate relief in the original side in the application that has been filed to set aside the exparte decree. No costs.

28.08.2020

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Index: No
Speaking order

To
The Principal District Munsif Court,
Poonamallee.



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