

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.947 of 2014

N.Sankaranarayanan

... Petitioner

Versus

- 1.N.Arunachathammal
- 2.N.Gomathinayagam
- 3.S.Saraswathi
- 4.K.Subha
- 5.V.Manthiram
- 6.C.Aruna
- 7.L.Chinnammal
- 8.L.Aruna
- 9.L.Vellammal
- 10.L.Muthulakshmi
- 11.S.Muthuvel
- 12.S.Sankaran
- 13.S.Venkatachalam
- 14.S.Ananda Saraswathi
- 15.M.Bhagavathi
- 16.S.Ramalingam
- 17.S.Narayanan
- 18.S.Muthulakshmi
- 19.S.Murugan
- 20.S.Paramasivam
- 21.S.Selvaraj
- 22.K.Parameswariammal
- 23.K.Muthulakshmi
- 24.S.Indira
- 25.K.Vadivel Murugan
- 26.K.Muthukrishnan
- 27.K.Muthuselvakumar
- 28.S.Paramasivam Pillai
- 29.S.Gomathiammal
- 30.M.Shanmugasundari
- 31.P.Muthurajeswari

32.G.Vasuki
33.S.Balasubramaniam
34.R.Lakshmi
35.R.Umasankari
36.K.Ulageswariammal
37.K.Muthusamy
38.V.Anandhi
39.K.Shanmughasundaram
40.M.Sundari
41.C.Sankari
42.K.Murugan
43.R.Vallidevi

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code, praying to set aside the order dated 12.11.2013 in un-numbered I.A.No.... of 2013 in C.F.R.No.8077 of 2013, direct restoration of the suit in O.S.No.37 of 2010 and further direct for transmission of the suit to this Court as per the order in T.O.P.Nos.2662 & 2663 of 2012 in C.S.No.592 of 2009.

For petitioner : Mr.A.K.Raghavulu

For Respondents : Mr.C.Umashankar,
for R11 to R13, R16, R17, R19 to R21

: Mr.K.S.Viswanathan,
for R26, R29, R30, R32, R34, R36, R38,
R40 to R43

: Ex-parte - R1, R3 to R10, 14, 15, 18 & 35
(before the Trial Court)

: No Appearance-R2, R22 to R25,31,37 & 39

ORDER

The plaintiff in the suit O.S.No.37 of 2010 is the revision petitioner

herein.

2.The petitioner/plaintiff filed the suit for partition and separate possession in O.S.No.37 of 2010 on the file of the Sub-Court, Ponneri, in which, he claims 1/7th of share in the suit property along with additional share in item Nos.1 and 2.

3. The 36th defendant filed a written statement, which was adopted by defendants Nos.22, 23 to 27, 29, 30, 32, 33, 40 to 43. No summons were served on the defendants 31 & 39. After giving due opportunities to the defendant Nos.2, 24, 25, 28 & 37, they have not filed any written statement. On hearing date, i.e on 19.11.2012, substituted service was ordered to the defendants 31 & 39, and the defendants No.2, 24, 25, 28 & 37 were directed to file their written statement and the matter was adjourned to 22.01.2013. Further, it appears that on 22.11.2012, the matter appears to have been taken up for hearing and the proceedings are recorded as if the plaintiff's counsel reported that no instructions from the plaintiff, accordingly, the suit was dismissed for default. In respect of filing an application for restoring the suit, it appears that the application was filed under Sections 151 & 152 of CPC and the same was dismissed. Hence, the present Civil Revision Petition by the plaintiff.

4. After going through the affidavit filed before the Trial Court, it is seen that in fact, in respect of the same property, Civil Suits were filed before the original side of this Court in C.S.Nos.591, 592 & 593 of 2009,

which are pending before this Court, while another Civil Suit No.12087 of 2010 is pending before the VII-Additional City Civil Judge at Chennai. It appears that the petitioner herein filed Transfer Original Petitions in Tr.O.P.Nos.2662 & 2663 of 2012, before this Court to transfer all these suits pending before the above said Courts to this Court for conducting a joint trial and the said transfer petitions were allowed on 14.08.2013. At that time, after the order was passed in the transfer petitions, the petitioner came to know that the main suit was dismissed for default, as observed thereunder, the present application is filed under Sections 151 & 152 of CPC., for rectifying the mistake committed in dismissing the suit for default on 22.1.2012 and to restore the suit on file and send the suit records to this Court as per the order in transfer petitions Tr.O.P.Nos. stated above. It is stated by the learned counsel for the petitioner that in the case bundle, they have made endorsement 'no instructions' by the counsel for the defendants 2 & 28, for whose written statement only, the case was posted for the hearing date 22.01.2013 and not on 22.11.2012 and on that day, learned counsel for the plaintiff has not made any representation to report as no instructions on behalf of the plaintiff, as mentioned in the said order.

5. Taking note of entirety of the facts into consideration and also taking note of the fact that the written statement was not filed by the defendants No.2, 24, 25, 28 & 37, I am of the considered view that taking into consideration the suit in respect of O.S.No. 37 of 2013 was taken for

hearing on 22.11.2012 itself instead of 22.01.2013, and it had left confusion in the mind of the counsel, as he reported no instructions as if from the plaintiff instead of defendants 2 and 28, and the suit was dismissed for default on that score. Therefore, the order passed in C.F.R.8077 of 2013 is set aside and the suit in O.S.No.37 of 2010, which was filed before the Sub-Court, Ponneri, is restored to file and pursuant to the transfer order, the transfer petitions in Tr.O.P.Nos.2662 & 2663 of 2012 shall stand restored to the Original side of this Court. Hence, the Civil Revision Petition is allowed.

6. On restoration, the Sub-Court, Ponneri is directed to issue notice for hearing to all the parties before transferring the case to this Court and pursuant to the order of transfer, after restoring of the transfer bundle from the Ponneri Court to this Court.

7. Registry is directed to issue fresh summons to all the defendants in all of the case before listing to the Court, before the Master, while taking the transferred suit along with C.S.No.592 of 2009. With these observations, the Civil Revision Petition is allowed. No costs.

06.01.2020

Index : yes/no
 Internet : yes/no
 Speaking/Non-Speaking order

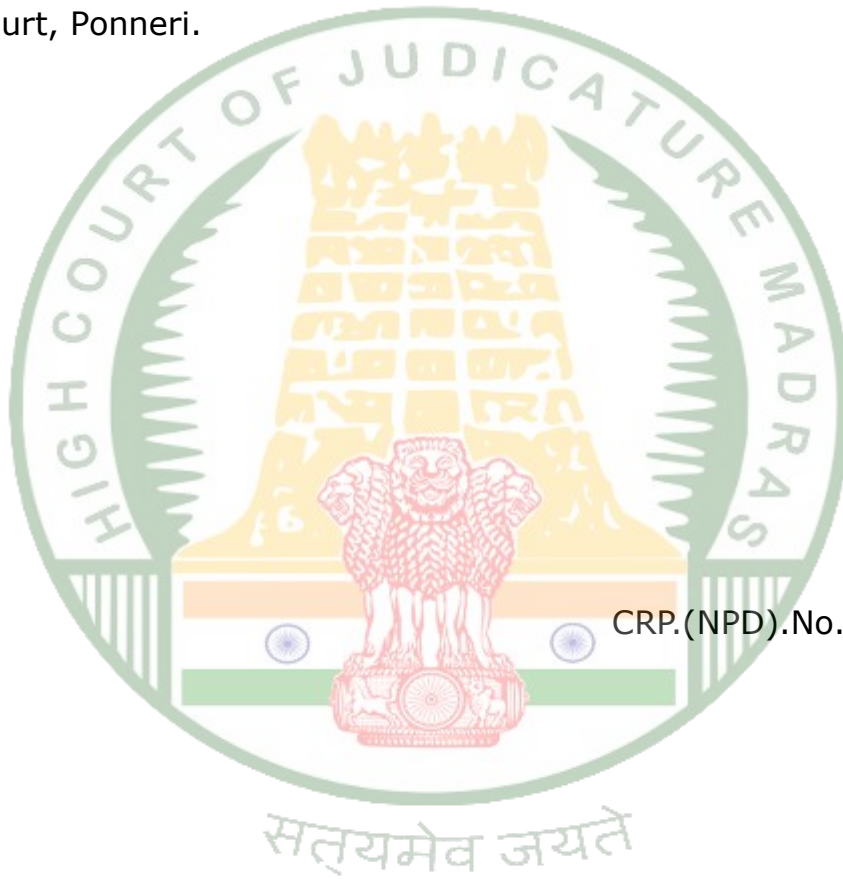
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RMT.TEEKAA RAMAN,J.,

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To
The Sub-Court, Ponneri.



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