

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.R.P.(NPD) No.3996 of 2017 and
C.M.P.No.18656 of 2017

Saraswathi

... Petitioner

VS.

1. Palanisamy
2. Sellammal
3.Ramasamy

... Respondents

Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decretal order passed in R.E.P.No.45 of 2015 in O.S.No.253/2010 on the file of the Sub-ordinate Judge, Tiruchengode dated 11.03.2016.

For Petitioner

Mr.K.Rajasekaran

ORDER

This Civil Revision Petition has been filed against the order dated 11.03.2016 passed in R.E.P.No.45 of 2015 in O.S.No.253/2010 by the learned Subordinate Judge, Tiruchengode.

2. The case of the revision petitioner is that two suits have been filed by the first respondent herein in O.S.Nos.300 and 118/2007 before the

District Court, Namakkal with regard to property in dispute. One is for partition and the other is with respect to specific performance. Pursuant to the Interlocutory Application filed by the respondents, both the matters have been transferred to the Subordinate Court, Tiruchengode and renumbered as O.S.Nos.253/2010 and 254/2010, respectively.

3.As the petitioner/defendant did not appear, proceedings have been conducted, and exparte decree has been passed with regard to the suit filed for specific performance in O.S.No.253 of 2010, based on which Execution Petition in R.E.P.No.45/2015 has been filed. In the order dated 11.03.2016 passed in Execution Petition R.E.P.No.45/2015. Pursuant to the decree in O.S.No.253 of 2010, the Plaintiff who is the first respondent herein was directed to deposit balance sale consideration within a period of two months and the defendants 1 and 2 shall execute Sale deed within a period of one month from the date of deposit of the amount. Being aggrieved by the same, the present Civil Revision Petition has been filed the petitioner/third defendant.

4. According to the petitioner herein, when both the suits have to be heard together, setting the petitioner exparte and passing such an order is not correct with an observation that, it is quite clear from the non-

appearance of the petitioner to contest the case that the sale deed executed by the defendants with the plaintiff is real.

5. The learned counsel appearing for the petitioner submitted that he is not seeking any relief against the respondents 1 and 2 in the present Civil Revision Petition. Despite notice being served on the first respondent and his name printed in the cause list there is no representation on behalf of him either in person or through counsel.

6. Hence, without going into the merits of the matter, this Court feels it appropriate that, as both the suits ought to be tried together, the matter has to be restored to file. It is submitted that the suit for partition is still pending. When possession was taken in the partition suit, this Court would not have interfered with the order passed by the trial court and as the suit for partition is pending, the suit is restored to file on payment of a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the first respondent by way of Cheque/Demand Draft within a period of two weeks from the date of receipt of a copy of this order, failing which the order impugned will stand/ restored. Since the suit is pending from 2007, the Trial Court is expected to take up both the suits together, and proceed with the same, on a day-to-day basis without adjourning the matter beyond five working days at any point

of time and fresh decision may be rendered in both the suits on or before 23.12.2020. The parties shall conclude the arguments before 30.11.2020. If the petitioner who is the third defendant seeks any further adjournment, he shall pay costs of Rs.5,000/- (Rupees Five Thousand Only) to the Plaintiff for each and every hearing,

7. If the party seeks any adjournment, except on the ground of accident or death, the aforesaid costs shall be paid. In case of accident or death, relevant certificates have to be produced in the subsequent hearings. If the court below suspects that, the certificate issued by the Doctor is bogus, a complaint may be lodged against the Doctor after questioning him, so that, appropriate action may be taken against the Doctor concerned.

Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected C.M.P.No.18656 of 2017 is closed.

WEB COPY

09.03.2020

arr

Index: Yes/No

Internet: Yes/No

To

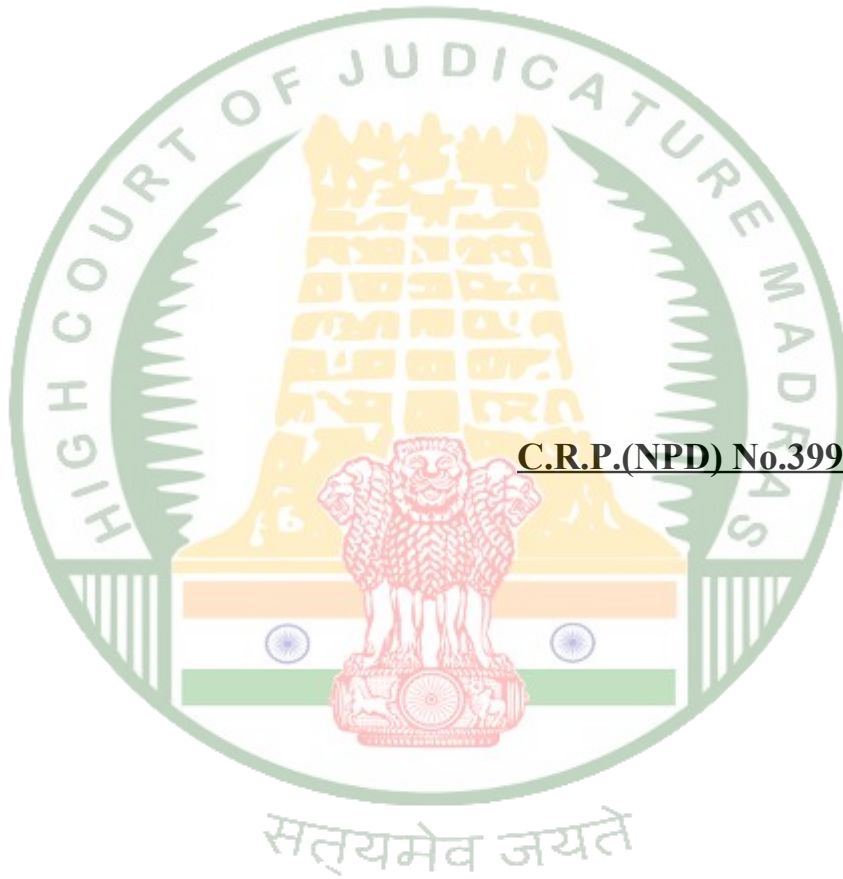
The Sub-ordinate Judge,
Tiruchengode



WEB COPY

S.VAIDYANATHAN,J.

arr



C.R.P.(NPD) No.3996 of 2017

WEB COPY

09.03.2020