

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) Nos.3167 & 3171 of 2018
& C.M.P.Nos. 18116 & 18134 of 2018

K.Sivakaran ... Petitioner in both the petitions

Vs.

1. A.S.Senthivel
2. Deivasigamani
3. M.N.K.Periyasamy
4. Vasuki
5. K.Shanmugam
6. S.Sasikiran
7. S.Murugesan

.. Respondents in both the petitions

PRAYER: Civil Revision Petitions filed under Article 227 of the
Constitution of India, praying

(i) **CRP 3167/2018**: to set side the fair and final order dated 07.06.2018

made in I.A.369 of 2017 in IA No.602 of 2016 in O.S.No.266 of 2016 on the file of the 1st Additional District Munsif, Erode.

- (ii) **CRP 3171/2018**: to set side the fair and final order dated 07.06.2018 made in I.A.370 of 2017 in O.S.No.266 of 2016 on the file of the 1st Additional District Munsif, Erode.

For Petitioner : Mr.G.Ethirajulu
(in both the petitions)

For Respondents : Mr.K.S.Jeyaganeshan for R6
(in both the petitions)

No appearance for RR1 to 5 & 7

COMMON ORDER

This matter is taken up for hearing through Video-Conferencing.

The plaintiff in OS No.266 of 2016 has come up with these two Revision Petitions, challenging the orders made in IA Nos.369 of 2017 and 370 of 2017. IA Nos.369 of 2017 and 370 of 2017 are applications filed under Order I Rule 10(2) of the Code of Civil Procedure, seeking to implead the proposed parties as the defendants in the suit.

2. Impleading was sought for in the suit and in IA No.602 of 2016, an

application, filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure. The basis on which the impleading was sought for was that the fifth defendant had filed a memo stating that he had settled the property on the proposed party, viz., the sixth respondent and the second defendant in the suit had sold the property to the second proposed party viz., the seventh respondent.

3. The applications were resisted by the respondents contending that the suit being one for bare injunction and not a suit on land, the applications for impleading are not maintainable. The learned First Additional District Munsif, Erode, agreed with the contentions of the respondents and concluded that the suit for bare injunction is not a suit on land. Upon such conclusion, the learned First Additional District Munsif, dismissed the applications for impleading.

4. I have heard Mr.G.Ethirajulu, learned counsel appearing for the petitioner in both the petitions and Mr.K.S.Jeyaganeshan, learned counsel appearing for the sixth respondent one of the proposed parties in both the

petitions. The other respondents though served are not appearing either in person or through counsel duly instructed. Though notice to the fifth respondent is not served, since the sixth respondent being his son is represented by a counsel notice to the fifth respondent is deemed unnecessary.

5. The only ground on which the learned Trial Judge had dismissed the applications is that the suit for injunction is not a suit on land. The very same question was considered by a Division Bench of this Court in ***M/s.Harsha Estates & others vs. Dr.P.Kalyana Chakravarthy and other, reported in 2018 (3) LW 900***. In the said judgment the Hon'ble Division Bench after referring to various pronouncements in relation to the question whether a suit for bare injunction is a suit on land or not, had held as follows:

“10. An analysis of all the above judgments brings out the following principles of law to decide whether a suit is for “suit for land”.

(i) In a suit the reliefs claimed, if granted, would directly affect title to or possession of the land it will be “suit for land”

(ii) If the object of the suit is something different, but involves the consideration of the question of title to land indirectly, it will also be “suit for land”

(iii) A suit where the claim is for recovery of possession or control of land, it will be “suit for land”.

(iv) In a suit where determination of any right or interest over an immovable property is involved, it will be “suit for land”.

(v) A suit for bare injunction restraining the defendant from interfering with the possession and enjoyment of the property by the plaintiff, will be “suit for land”

(vi) In a suit for bare injunction where the plaintiff seeks to restrain the defendant from dealing with the suit property by creating a charge or alienating or encumbering the property, will also fall within the ambit

of a “suit for land”. This Court in M/s.Rja Holdings, Financiers and Merchants, Partnership Firm represented by its Partner Lalitha Raja in O.S.A.No.2/2018, dated 10.07.2018 has considered this issue in detail.

(vi) (a) In a suit for specific performance of an agreement of sale wherein the relief of delivery of possession of the suit property has been specifically claimed, it will be “suit for land”.

vi (b) In a suit for Specific Performance where the suit is only for enforcement of the agreement simpliciter without seeking for any other relief, the same will also fall within the ambit of “suit for land” since the relief of possession is inherent in the relief of Specific Performance.

vi (c) In a suit for Specific Performance, where the suit is only for enforcement of the agreement simpliciter and the plaintiff specifically claims to be in possession of the suit property and there is no denial of the said fact by

the defendant, the said suit will not come within the ambit of “suit for land”.

vi (d) In a suit for Specific Performance where the plaintiff apart from seeking to enforce the agreement also seeks a relief of injunction against the defendant, not to interfere with his possession and enjoyment or not to create any charge or encumbrance or not to alienate the suit property, such suits will also come within the ambit of “suit for land”.

6. In view of the above pronouncement of the Division Bench, it is needless to state that the conclusion of the learned First Additional District Munsif is erroneous. Once the alienation are admitted, it is clear that the proposed parties are necessary parties to the suit. The sole ground on which the applications have been rejected has been held to be erroneous. Hence both the Civil Revision Petitions are **allowed** the applications in IA Nos.369 and 370 of 2017 will stand allowed. The plaintiff shall carry out the amendment and file amended copies of the pleadings within a period of four

weeks from the date of receipt of a copy of the order. It will be open to the newly added parties to file their written statements if any. No costs. Consequently the connected miscellaneous petitions are closed.

25.08.2020

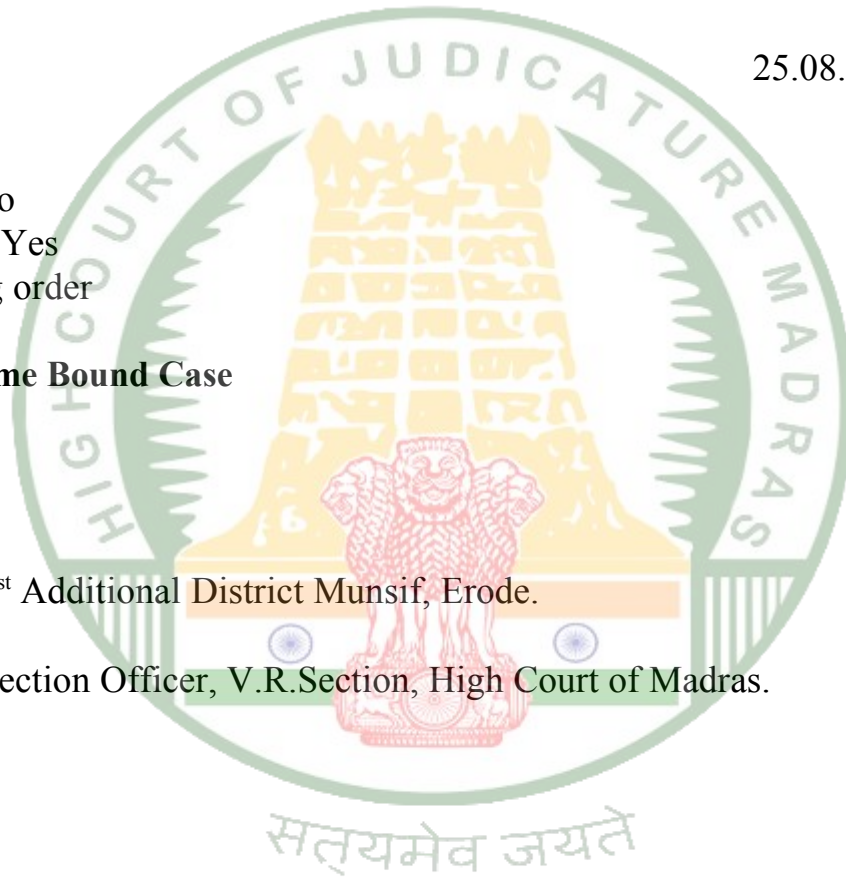
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Speaking order

Note: Time Bound Case

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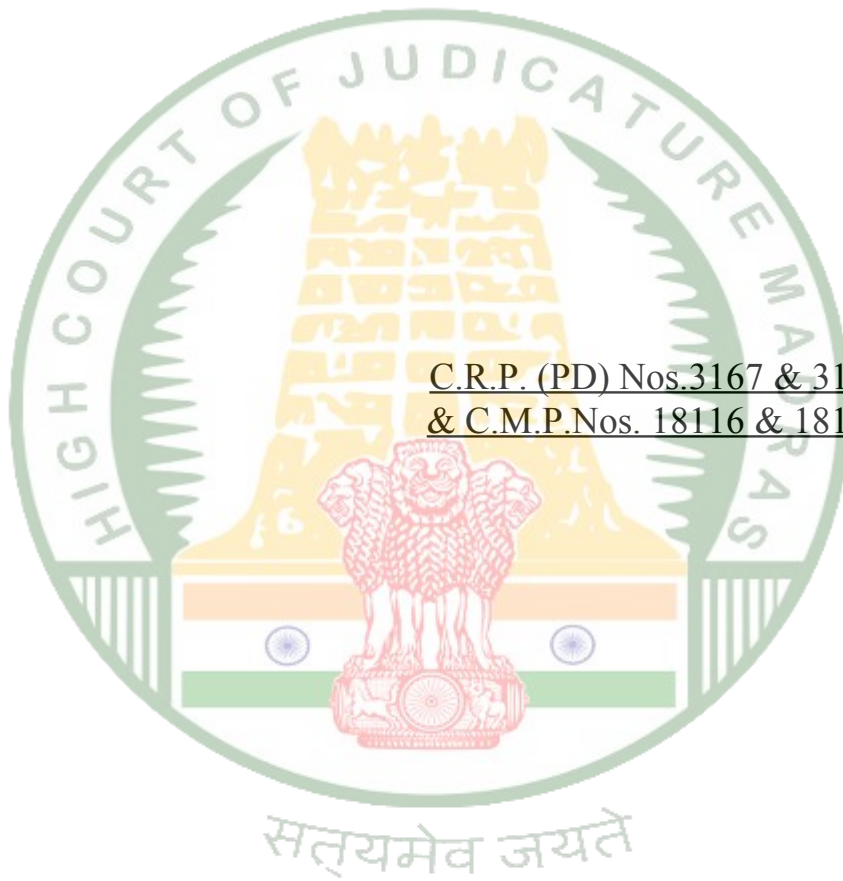
1. The 1st Additional District Munsif, Erode.
2. The Section Officer, V.R.Section, High Court of Madras.



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R.SUBRAMANIAN, J.



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