

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.1579 of 2018

and

CMP.No.8519 of 2018

1.Narasimman
2.Muniammal
3.Vasanthi
4.Radha

..Petitioners

Vs.

Rajeswari

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC praying to set aside the decretal order and fair order dated 16.02.2018 passed in I.A.No.65 of 2017 in OS.No.29 of 2015 on the file of the Principal District Judge, Dharmapuri.

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For Petitioners : Mr.G.Mohanraj

For Respondent : No Appearance

ORDER

This Civil Revision Petition is filed against the decretal order and fair order dated 16.02.2018 passed in I.A.No.65 of 2017 in OS.No.29 of 2015 on the file of the Principal District Judge, Dharmapuri, thereby dismissing the petition to set aside the exparte decree.

2. The petitioners are the defendants and the respondent is the plaintiff. The respondent filed suit for partition. After engaging counsel by the petitioners before the trial court, they failed to file written statement. Therefore, they were set exparte and exparte decree and judgment was passed against them by judgment and decree dated 17.12.2015. Thereafter, the respondent filed petition for passing final decree in IA.No.163 of 2016. In the said petition, the petitioners received notice and immediately the petitioners filed petition to set aside the exparte decree and stated the reasons for non filing of written statement that the first petitioner suffered with jaundice. The first petitioner is being the head of the family, he is looking after the case filed by the respondent herein. Because of his illness, he could not instruct his counsel to file written statement in time. Therefore, the court below dismissed the petition for the reason that the petitioners were set exparte and adjourned the matter for

several hearings for passing exparte decree. Even then, the petitioners failed to file written statement and they also did not state proper reason for non filing of written statement. They also failed to produce any medical records to show that the first petitioner suffered with jaundice and had taken native treatment.

3. Admittedly, the first petitioner suffered with jaundice and he had taken native treatment. He is being the head of the family, other are depending upon the first petitioner and as such they could not able to instruct their counsel to file their written statement before the court below. Considering the above facts and circumstances of the case and also that the suit was filed by the respondent for partition, the petitioners may be given one more opportunity to defend the suit.

4. Accordingly, this civil revision petition is allowed and the decretal order and fair order dated 16.02.2018 passed in I.A.No.65 of 2017 in OS.No.29 of 2015 on the file of the Principal District Judge, Dharmapuri is set aside on condition that the petitioners shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the respondent within a period of two weeks from the date of receipt of copy of this order, failing which the order passed by this Court shall stand automatically cancelled. Thereafter, the trial court is directed to

dispose of the suit in OS.No.29 of 2015 within a period of nine months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

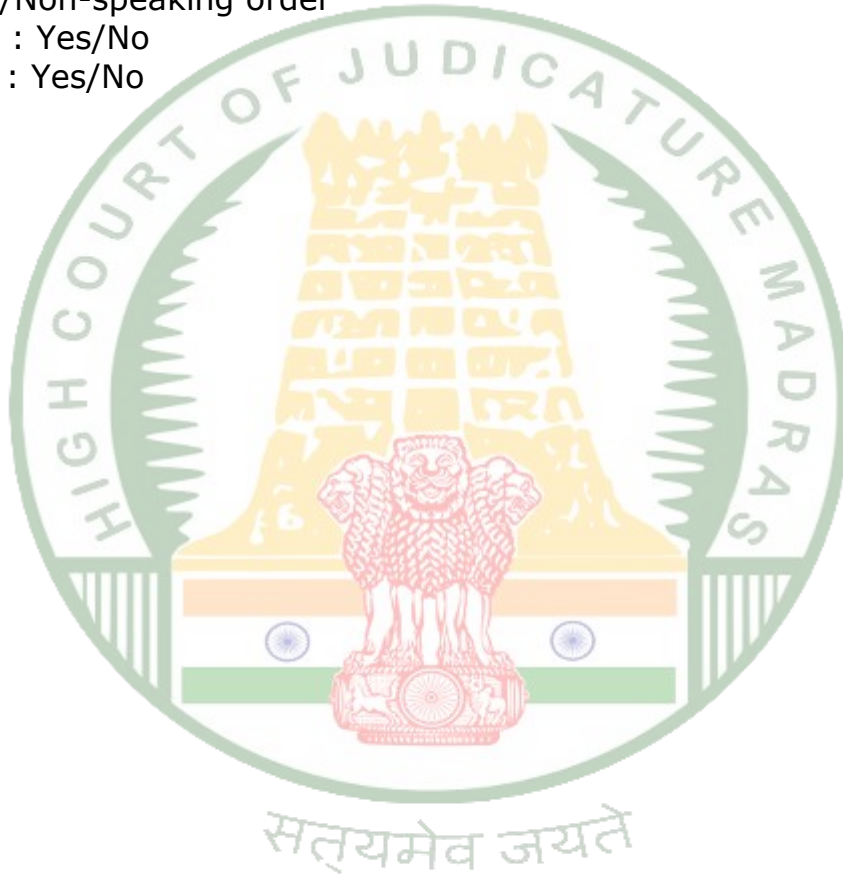
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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

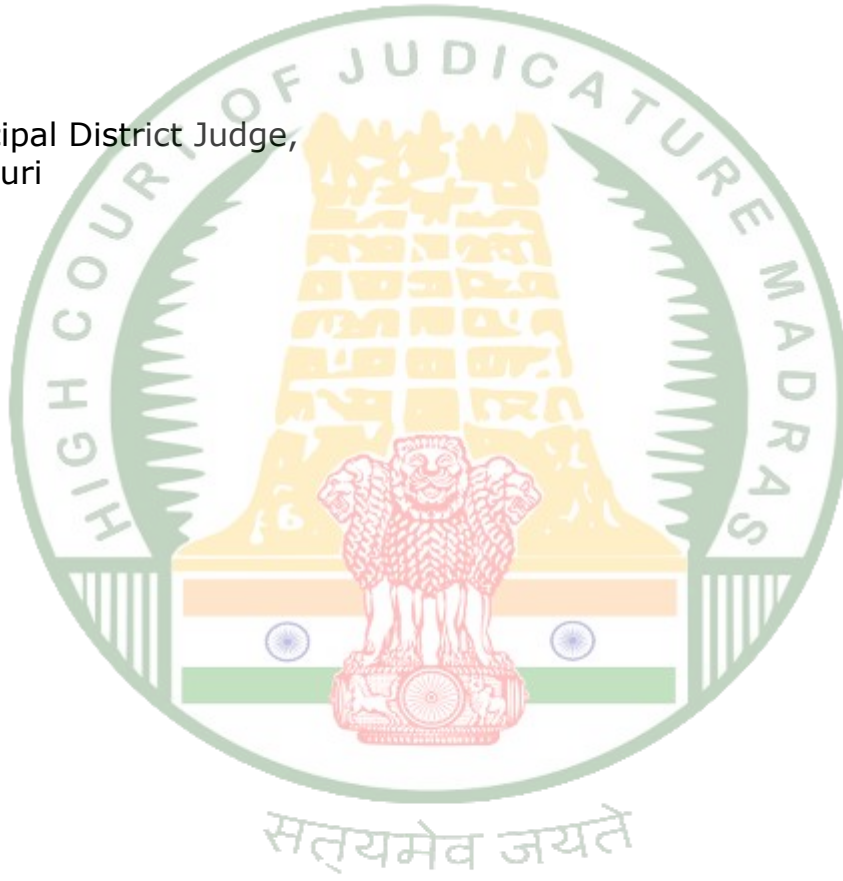
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To

The Principal District Judge,
Dharmapuri



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G.K.ILANTHIRAIYAN,J.

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