

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

CORAM

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

C.R.P.(NPD) No.1248 of 2016
and C.M.P.No.6955 of 2016

H.A.Yusuf Sahib Maraikar (Died)
Fathima Sulthan
W/o.H.A.Yusuf Sahib Maraikar ... Petitioner

Vs.

Mohideen Abdul Kader
S/o. K.Mohamed Yusuf ... Respondent

Prayer:-

Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the the order and decreetal order passed in E.A.No.39 of 2014 in E.P.No.8 of 2014 in O.S.No.68 of 2007 dated 10.09.2015 on the file of the Subordinate Judge at Nagapattinam and allow the Civil Revision Petition.

For Petitioner : Mr.J.R.K.Bhavanantham
For Mr.N.S.M.Md.Jafarullah

For Respondent : No appearance

ORDER

This Civil Revision Petition is directed as against the fair and decretal order dated 10.09.2015 passed in E.A.No.39 of 2014 in E.P.No.8 of 2014 in O.S.No.68 of 2007 on the file of the Subordinate Court, Nagapattinam, thereby, allowing the petition to implead the petitioner herein as legal heir of the judgment debtor.

2. The respondent herein filed a suit for recovery of possession and damages in respect of the suit property as against one H.A.Yusuf Sahib Maraikar. The petitioner herein was set ex-parte and ex-parte decree order was passed as against the said H.A.Yusuf Sahib Maraikar. Before execution of the decree, the judgement debtor died. Therefore, the respondent filed a petition to implead the petitioner herein as legal heir in E.A.No.61 of 2009 in E.P.No.28 of 2009, which was dismissed on 25.08.2010 since the judgement debtor died. Therefore, the respondent herein filed an application to set aside the order of abatement passed due to the death of the judgement debtor. Again, the respondent filed execution petition in E.P.No.8 of 2014, in which, the respondent filed E.A.No.39 of 2014 to

implead the petitioner herein as wife of the judgement debtor namely, H.A.Yusuf Sahib Maraikar. The petitioner vehemently contended that she is not wife of H.A.Yusuf Sahib Maraikar, she is wife of Yusuf Sahib. As such the respondent utilizing the circumstance, filed the petition to implead the petitioner as legal heir of the deceased judgement debtor. The Court below allowed the petition with observation that the contention of the petitioner can be agitated in the main EP.

3. The learned counsel for the petitioner would submit that Section 50 of Civil Procedure Code is very clear that if the judgement debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased. In the case on hand, the respondent already filed the petition to implead the legal heir and the same was dismissed by an order dated 25.08.2010 in E.A.No.61 of 2009 in E.P.No.28 of 2009. Again, the respondent filed E.A.No.39 of 2014 in E.P.No.8 of 2014 in O.S.No.68 of 2007 without any iota of proof to show that the petitioner is the legal representative of the deceased judgement debtor.

4. Though notice was served on the respondent/plaintiff herein and his name was printed in the cause list, none appeared on behalf of the respondent by person or through pleader.

5. On perusal of the records, it revealed that the respondent already filed the petition to implead the legal heir of the deceased judgement debtor in E.A.No.61 of 2009 in E.P.No.28 of 2009 and the same was dismissed by an order dated 25.08.2010. While being so, without even filing any legal heir ship Certificate, the respondent simply filed E.A.No.39 of 2014 in E.P.No.8 of 2014 in O.S.No.68 of 2007 to implead the petitioner herein as legal heir of the deceased judgement debtor. The trial Court ought not to have decided the issue in the impleading petition.

6. Considering the above facts, this Court finds that the order passed by the trial Court is perverse and it is liable to be set aside. Accordingly, the order dated 10.09.2015 passed in E.A.No.39 of 2014 in E.P.No.8 of 2014 in O.S.No.68 of 2007 on the file of the Subordinate Court, Nagapattinam, is hereby set aside.

7. Accordingly, this Civil Revision Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes

Index : Yes/No

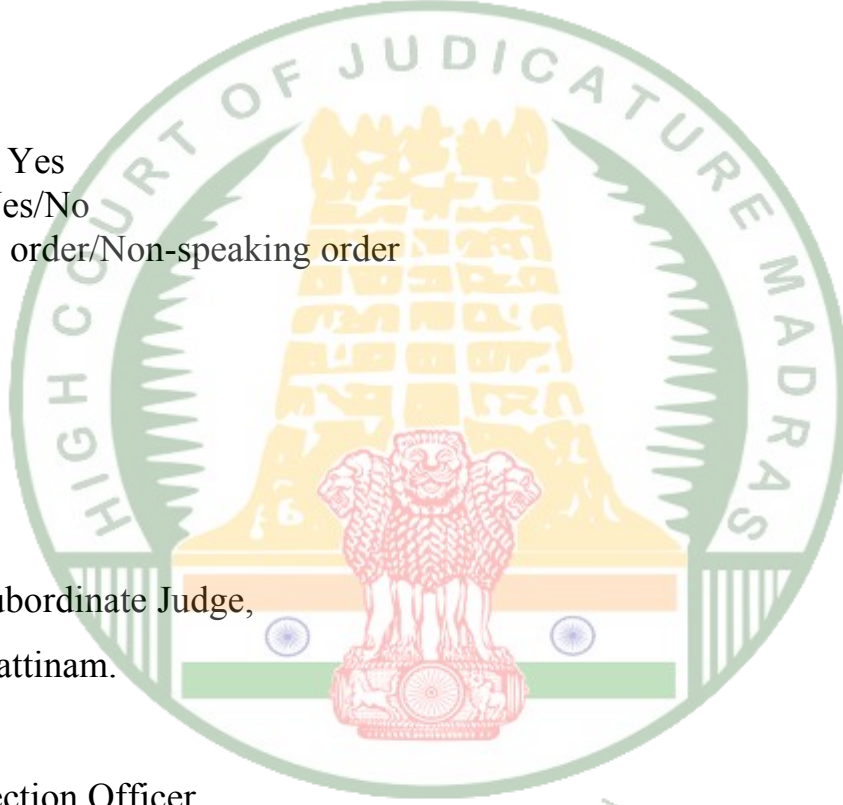
Speaking order/Non-speaking order

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To

1. The Subordinate Judge,
Nagapattinam.

2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

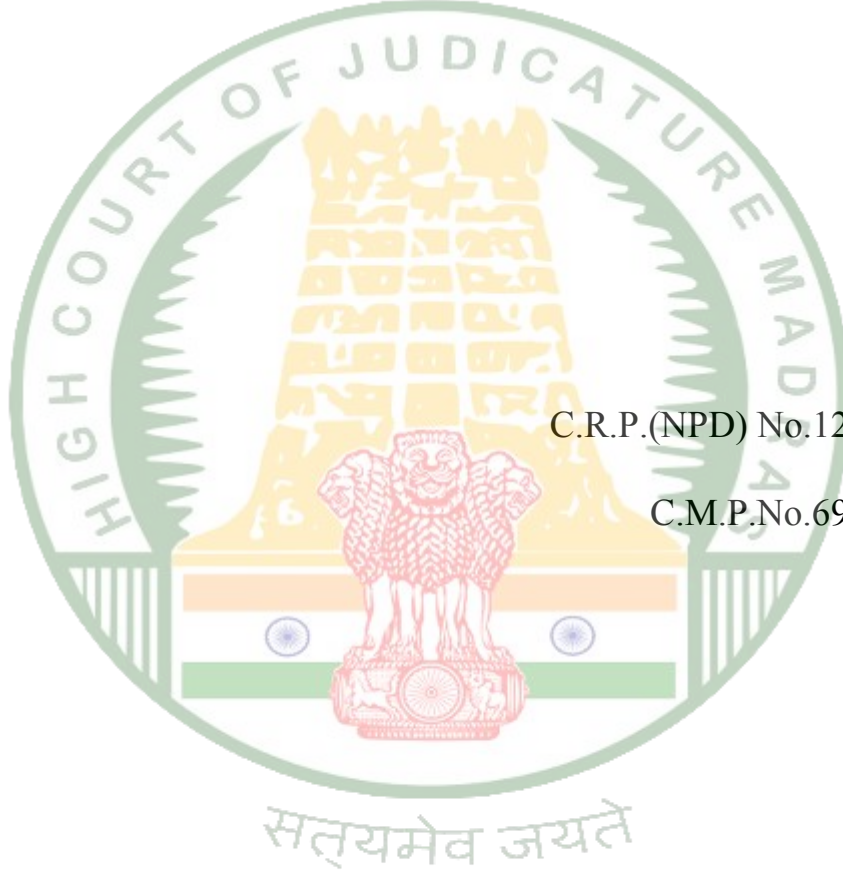


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