

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.2528 of 2016
and C.M.P.No.13006 of 2016

1.T.A.Kaliappan
2.T.P.Kumaravel
3.Minor Akil Adhitya

...Petitioners

Vs

1.S.P.Murugesan
2.C.Pratheepkumar
3.T.P.Ramasamy

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order of the Principal District Court, Erode, in Tr.O.P.No.79 of 2015 dated 23.06.2016.

For Petitioners : Mr.Mukunth for
M/s Sarvabhauman Associates
For Respondents : Mr.L.Mouli for R1
Ms.Zeenath Begum for R2 & R3

ORDER

The Civil Revision Petition is arising out of the fair and decretal order of the Principal District Court, Erode, in Tr.O.P.No.79 of 2015 dated 23.06.2016, thereby dismissed the petition seeking transfer of the suit.

2.The petitioners are the plaintiffs and originally they filed the suit to set aside the sale deed dated 27.10.2006, registered vide document No.4066 of 2006 within the office of the Sub-Registrar, Perundurai in O.S.No.10 of 2010, on the file of the Principal District Court, Erode.

3.While pending the suit, one Sowndaram filed a suit for specific performance in respect of the very same property in O.S.No.49 of 2010.

4.While pending the said suit in O.S.No.10 of 2010, the suit filed by the petitioners, was transferred to the file of Sub Court, Perundurai, on the ground of pecuniary jurisdiction and it was renumbered as O.S.No.151 of 2010. After filing the suit for specific performance by one Sowndaram in O.S.No.49 of 2010, on a petition for transfer in T.O.P.No.30 of 2011, seeking transfer of the suit in O.S.No.151 of 2010, from the file of the Subordinate Court, Perundurai to the file of the II Additional District Court, Erode, by an order dated 28.10.2011, the Principal District Judge, Erode,

ordered to withdraw the suit in O.S.No.151 of 2010 from the file of the Sub Court, Perundurai and transferred to the file of the Principal District Court, Erode for joint trial along with O.S.No.49 of 2010. Thereafter the suit in O.S.No.49 of 2010 was settled between the parties. Therefore, no suit is pending in O.S.No.49 of 2010.

5.At that juncture, the petitioners again filed a memo in O.S.No.10 of 2010 (O.S.No.151 of 2010) stating that the suit is valued below Rs.10 lakhs and also the property situated within the jurisdiction of Subordinate Court, Perundurai and in view of the settlement arrived in O.S.No.49 of 2010, the present suit may be transferred to the file of the Sub-Court Perundurai. It was returned and directed the petitioners to file an appropriate application to transfer the same. Accordingly, the petitioners filed transfer O.P in Tr.O.P.No.79 of 2015 and the same was dismissed only on the ground that the suit or proceedings may be transferred under Section 24(5) CPC from a Court which has no jurisdiction to try it. The learned Principal District Court, without considering the above facts and circumstances mechanically dismissed the transfer petition only on the ground that though the Court has no jurisdiction, by an order of transfer, it

can be tried. Only on the pecuniary jurisdiction as well as the territorial jurisdiction, the suit in O.S.No.10 of 2010 filed before the Principal District Court, Erode was transferred to the file of the Sub Court, Perundurai. If the suit tried before the Principal District Court, Erode, the parties concerned will lose their Appeal right before the District Court.

6. Therefore, in view of the above discussion, the order made in Tr.O.P.No.79 of 2015 dated 23.06.2016. on the file of the Principle District Court, Erode, is set aside and accordingly, the Civil Revision Petition is allowed and thereby the suit in O.S.No.10 of 2010 pending on the file of the 2nd Additional District Court, Erode, is hereby withdrawn and transferred to the file of the Sub Court, Perundurai. On receipt of the entire bundle, the Sub Court, Perundurai, is directed to dispose of the same within a period of six months from the date of receipt of the bundles from the 2nd Additional District Court, Erode. No costs. Consequently connected miscellaneous petition is closed.

03.02.2021

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

To

- 1.The 2nd Additional District Court, Erode.
- 2.The Sub Court, Perundurai.

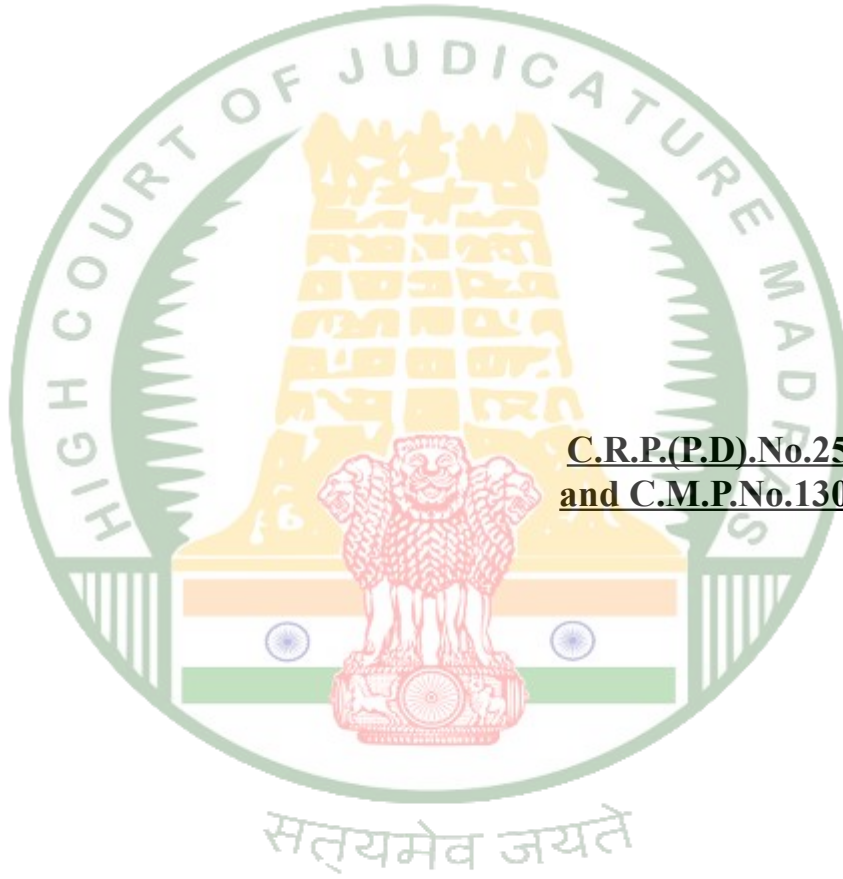


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