

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2021

CORAM

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

CRP.NPD.No.3645 of 2016

and

CMP.No.18561 of 2016

- 1.Sakunthala(died)
- 2.Sathyavathi
- 3.Sai Lakshmi
- 4.Neelavathi
- 5.Dhanalakshmi
- 6.G.Manoharan
- 7.Prema
- 8.M.Ramani
- 9.D.Shanthi
- 10.Uma Maheswari

(petitioners 6 to 10 brought on record as LR's  
of the deceased first petitioner viz  
Sakunthala vide court order dated 23.2.21  
made in CMP.Nos.3038,3039 & 3043 of  
2021 in CRP.No.3645 of 2016

..Petitioners

Vs.

- 1.Mohanaammal
- 2.Nagarajan
- 3.Devi
- 4.T.Selvarani
- 5.K.S.Chandrasekaran
- 6.K.S.Easu Devendran
- 7.S.Nagavalli
- 8.K.P.Kothandan
- 9.Manimala
- 10.Madhubala

..Respondents

**PRAYER:**

The Civil Revision Petition is filed under Section 115 of CPC against the petition order dated 24.10.2016 in unnumbered EA.Sr.No.1363 of 2014 in EP.No.20 of 2011 in OS.No.487 of 1981 on the file of the District Munsif at Thiruvallur.

(EA.Sr.No.1363 of 2014 Grounds amended vide order of court dated 18.11.2016 made in CMP.No.18156 of 2016 in CRP.NPD.Sr.No.84481 of 2016)

For Petitioners : Mr.A.R.Suresh

For Respondents : Mr.G.Perumal

**ORDER**

This civil revision petition is directed as against the order dated 24.10.2016 passed in unnumbered EA.Sr.No.1363 of 2014 in EP.No.20 of 2011 in OS.No.487 of 1981 on the file of the District Munsif at Thiruvallur thereby rejected the petition filed under Section 47 of CPC as not maintainable.

2. The petitioners are the defendants in the suit filed by the respondents herein for declaration and recovery of possession. The said suit was decreed by the judgment and decree dated 27.09.1991 and the same was confirmed by this Court by the judgment and decree dated

20.04.2011 in SA.No.512 of 1998. Thereafter, the respondents filed execution petition for execution of decree of recovery of possession. While pending the same, the petitioners filed petition under Section 47 of CPC raising various issues beyond the decree. As such the court below rejected the application as not maintainable for the reason that the execution court cannot go beyond the decree and the questions raised and decided before the trial court and the appellate court cannot be again raised in the execution proceedings.

3. The learned counsel for the petitioners submitted that without even numbering the petition filed under Section 47 of CPC, it cannot be rejected as not maintainable. In support of his contention, he relied upon the judgment in the case of **K.Venkatesan & Others Vs. E.Hemantharaj** reported in **CDJ 2016 MHC 5629**, wherein it is held as follows:

*6. Though the said contention cannot be raised by the Judgment Debtors in the Section 47 application in view of the above referred judgment, the Executing Court had rejected the petition going into the merits without numbering the application. The Executing Court could have disposed of the*

*application after numbering the application filed under Section 47 of the Civil Procedure Code. If an application filed under Section 47 is rejected on the question of maintainability, then there is no necessity for going into the merits of the matter. If the Court goes into the merits of the matter, then the application has to be numbered.*

This Court held that for the execution court, if any application filed under Section 47 of CPC is rejected on the question of maintainability, then there is no necessity for going into the merits of the matter. If the court goes into the merits of the matter, then the application has to be numbered.

4. In the case on hand, the execution court rejected the petition filed under Section 47 of CPC as not maintainable for the reason that the issues raised in the application filed under Section 47 of CPC were raised already before the trial court and also the appellate court.

5. Considering the above, this civil revision petition is allowed and the order dated 24.10.2016 in unnumbered EA.Sr.No.1363 of 2014 in EP.No.20 of 2011 in OS.No.487 of 1981 on the file of the District Munsif at Thiruvallur is set aside. It is made clear that the execution court is directed to number the said petition and pass orders on merits and in accordance with law within a period of four weeks from the date of numbering the

petition, if the delivery of possession is not effected. Consequently,  
connected miscellaneous petition is closed. No order as to costs.

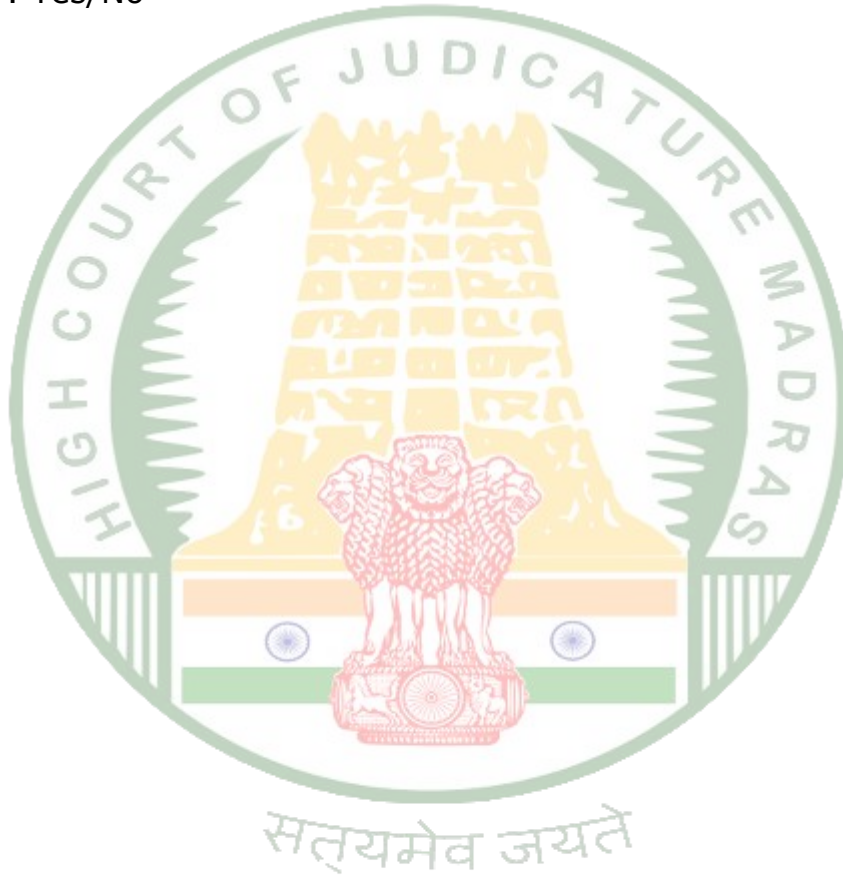
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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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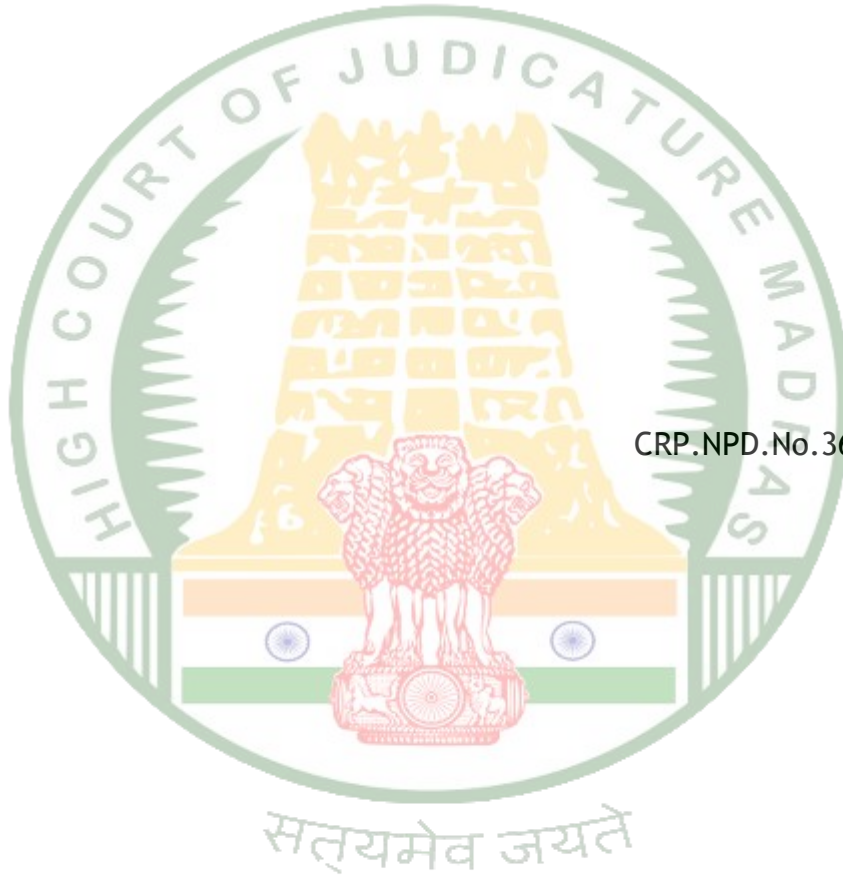
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**G.K.ILANTHIRAIYAN,J.**

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To

The District Munsif at  
Thiruvallur



CRP.NPD.No.3645 of 2016

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