

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2021

CORAM

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

CRP.NPD.No.500 of 2016

1. Ayyamperumal
2. Rajamani

... Petitioners

Vs.

1. Murugesan
2. Manickam
3. Palanisami
4. Elumalai
5. Ravi
6. Venkatachalam
7. Ayyamperumal

... Respondents

PRAYER: The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decretal order of the Subordinate Judge's Court at Sankari dated 15.07.2015 in I.A.No.44 of 2014 in unnumbered A.S.No. of 2014.

For Petitioners : Mr.P.Valliappan

For Respondents : M/s.Zeenath Begum

ORDER

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This Civil Revision Petition is directed against the fair and decretal order passed in I.A.No.44 of 2014 in unnumbered A.S.No. of 2014 dated 15.07.2015 on the file of the learned Subordinate Judge, Sankari.

2. Already, this Court in C.R.P (NPD) Nos. 3199 and 3200 of 2014 passed an order dated 07.08.2019 setting aside the order passed by the learned Sub Judge, Sankari in unnumbered A.S. of 2014. This Civil Revision Petition is also connected with the very same issue raised in C.R.P (NPD) Nos. 3199 and 3200 of 2014. Useful reference to the order dated 07.08.2019 can be extracted hereunder:-

“9. Admittedly, a common judgment and decree has been passed in O.S. No.151 of 2002, O.S. No.154 of 2002 and O.S. No.25 of 2013 by the District Munsif Court, Sankari. It is also an admitted fact that the respondents have also preferred an appeal as against the judgment and decree passed in OS. No.25 of 2013. Further, the petitioners and the respondents are family members. The respondents have sought for the relief of partition and injunction, whereas the petitioners through their suits have sought for permanent injunction. The issues involved in all three suits are common and the properties involved are also one and the same.

10. This Court has perused and examined the impugned orders. The Court below has not taken note of the fact that in all the three suits viz., O.S. No.154 of 2002, O.S. No.151 of 2002 and O.S. No.25 of 2003, the issues involved are common in nature and one party alone cannot be allowed to file an appeal and the other party cannot be

disallowed to file an appeal which will amount to discrimination and denial of justice to one of the parties. Further the delay is only 201 days. The petitioners have also explained in the affidavit filed in support of the condone delay applications, the reasons for not filing the appeal on time as they have stated that they are stone brakers in stone quarry at Karnataka and due to the said reason, they were unable to give instructions to their advocates on time to file the appeals.

11. For the foregoing reasons, this Court is of the considered view that the dismissal of I.A. No.46 of 2011 and I.A. No.80 of 2011 in unnumbered A.S. of 2011 by separate orders are erroneous orders and they have to be set aside.

Conclusion :

12. In the result, the following directions are issued

:-

- a) the impugned order, dated 06.11.2013 passed by the Trial Court in I.A. No.46 of 2011 in unnumbered A.S. of 2011 is hereby set aside.*
- b) the impugned order, dated 06.11.2013 passed by the Trial Court in I.A. No.80 of 2011 in unnumbered A.S. of 2011 is hereby set aside.*
- c) Accordingly, both Civil Revision Petitions are allowed. No costs”.*

G.K.ILANTHIRAIYAN,J.

Kv

3. Following the order dated 07.08.2019, this Civil Revision Petition is also allowed and the order passed in I.A.No.44 of 2014 in unnumbered A.S.No. of 2014 dated 15.07.2015 is hereby set aside. No costs.

22.03.2021

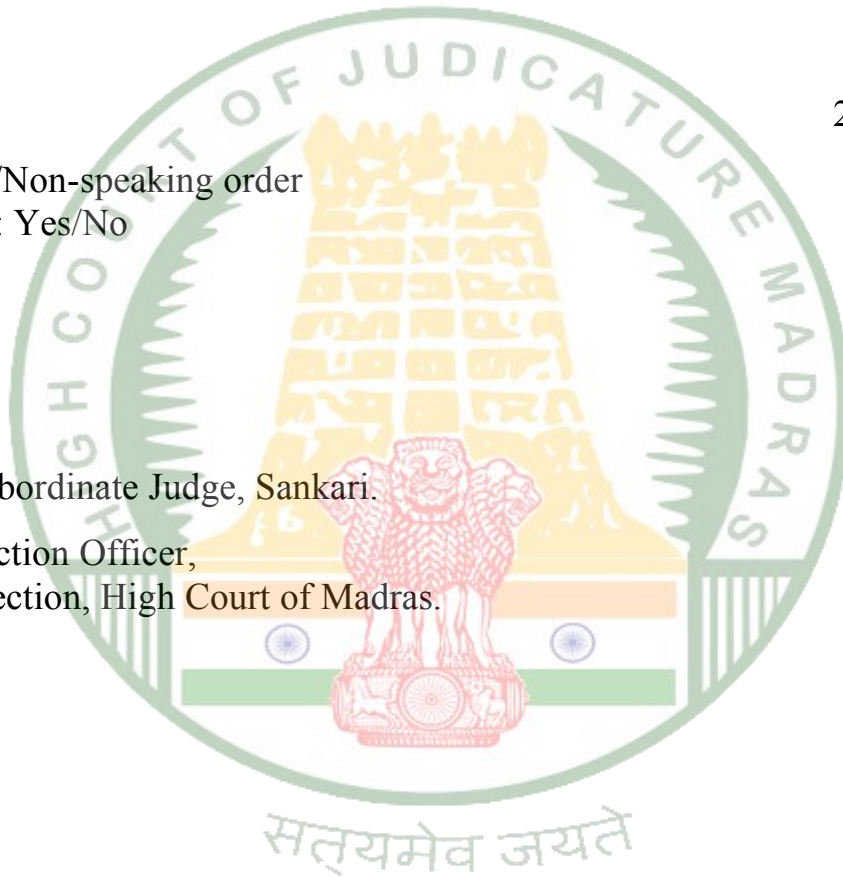
Speaking/Non-speaking order

Index : Yes/No

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To

1. The Subordinate Judge, Sankari.
2. The Section Officer,
V.R.Section, High Court of Madras.



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