

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2021

CORAM

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

CRP.PD.No.1907 of 2014 and
MP.No.1 of 2014

- 1.V.Kuppusamy(died)
- 2.Sivagami
- 3.Padmaloohani
- 4.Gnanasekaran
- 5.Chitra
- 6.Brindha
- 7.Venkatesan
- 8.K.Kanthakumar

..Petitioners

(petitioners 2 to 8 brought on record
as LRs of the deceased sole petitioner
Viz K.Kuppusamy vide court order dated
03.11.2020 made in CMPs 25340,
25342 and 25344 of 2019 in
CRP.No.1907 of 2014)

Vs.

- 1.P.K.Velusamy
- 2.P.Nagaraj
- 3.C.Panchanathan
- 4.C.Duraisamy
- 5.P.C.Murugesan

..Respondents

PRAYER:

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The Civil Revision Petition is filed under Article 227 of the
Constitution of India against the fair and final order dated 27.02.2014

made in IA.No.147 of 2013 in OS.No.127 of 2012 on the file of the District Munsif Court cum Judicial Magistrate Court, Kodumudi.

For Petitioners : Mr.A.Thiyagarajan

For Respondents

R6 : No Appearance
R1 to 5, 7 to 12 : Given up

ORDER

This Civil Revision Petition is arising out of fair and final order dated 27.02.2014 passed in IA.No.147 of 2013 in OS.No.127 of 2012 on the file of the District Munsif Court cum Judicial Magistrate Court, Kodumudi thereby dismissing the application filed for rejecting the plaint.

2. The first petitioner is the eighth defendant in the suit filed by one, Kandhavel Gupta. The suit is filed for declaration and injunction alleging that the first defendant executed sale deed in respect of the suit property in favour of thirteenth defendant. On the strength of the sale deed along with other defendants tried to interfere with the peaceful possession and enjoyment of the suit property. Further alleging that along with the first and thirteenth defendants, other defendants, namely the petitioner and others

attempted to trespass into the suit property on 01.08.2012. On the said cause of action, suit has been filed. While pending the suit, the first petitioner / 8th defendant filed petition to reject the plaint on various grounds. Though, the first petitioner raised several grounds, the trial court dismissed the same. Aggrieved by the said order, the present Civil Revision Petition has been filed before this Court. While pending the Civil Revision Petition, the first petitioner / 8th defendant died. Thereafter the legal representatives of the eighth defendant have been impleaded as petitioners 2 to 8.

3. The learned counsel for the petitioners would submit that the suit itself filed as against the eighth defendant only for injunction on his personal capacity alleging that he also attempted to trespass into the suit property along with other defendants. Now he died and the legal representations are no way connected with the other defendants and never interfered with the peaceful possession and enjoyment of the suit property. He also pointed out that the Order 22 Rule 2, Procedure where one of several plaintiffs or defendants dies and right to sue survives. Even after death of the eighth defendant, the suit may be proceeded as against the other defendants. In respect of the eighth defendant, main suit itself is abated, since the prayer sought for against the eighth defendant is only for permanent injunction in respect of the suit property.

4. On perusal of the records, the first petitioner / eighth defendant died and his legal representative were impleaded as petitioners in this revision petition by order dated 03.11.2020. As rightly pointed out by the learned counsel for the petitioners, if one of the defendants died, the suit may be proceeded with other defendants. Admittedly, the prayer sought for as against the eighth defendant, namely the deceased first petitioner is only for injunction. Now he died and as such the suit itself is abated as against the eighth defendant and need not be proceeded as against the legal representatives of the deceased eighth defendant. Therefore, the main suit in OS.No.127 of 2012 is abated as against the deceased eighth defendant and need not be proceeded as against his legal representatives.

5. Accordingly, this civil revision petition is allowed, and the order dated 27.02.2014 passed in IA.No.147 of 2013 in OS.No.127 of 2012 on the file of the District Munsif Court cum Judicial Magistrate Court, Kodumudi is set aside. Consequently, connected miscellaneous petition is closed. No order as to costs.

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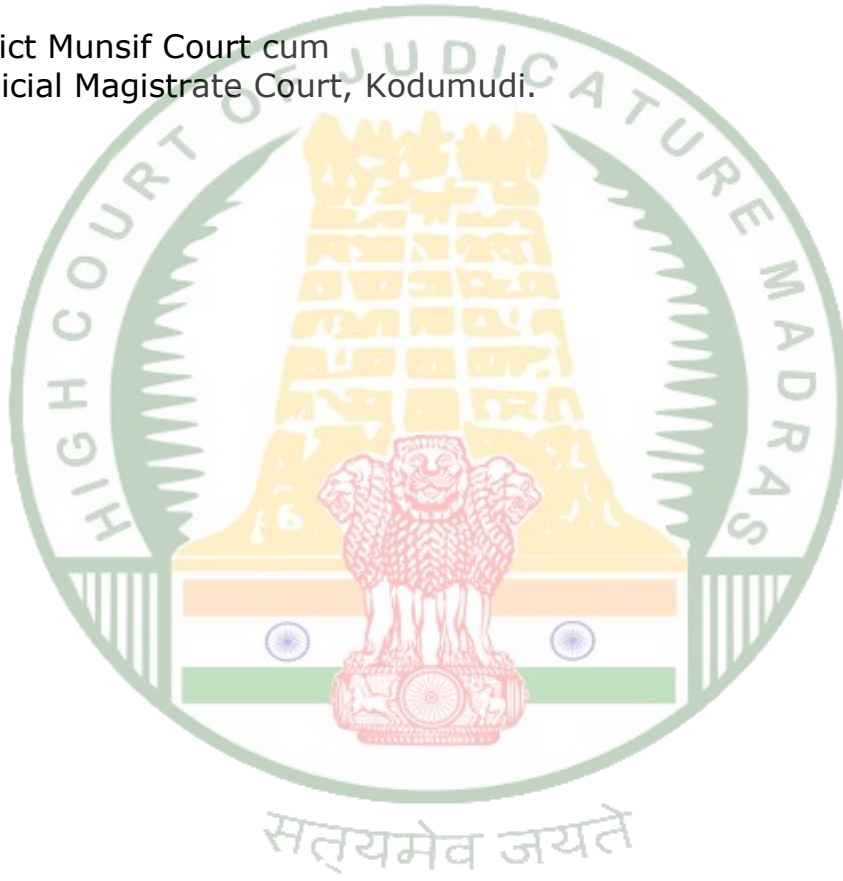
Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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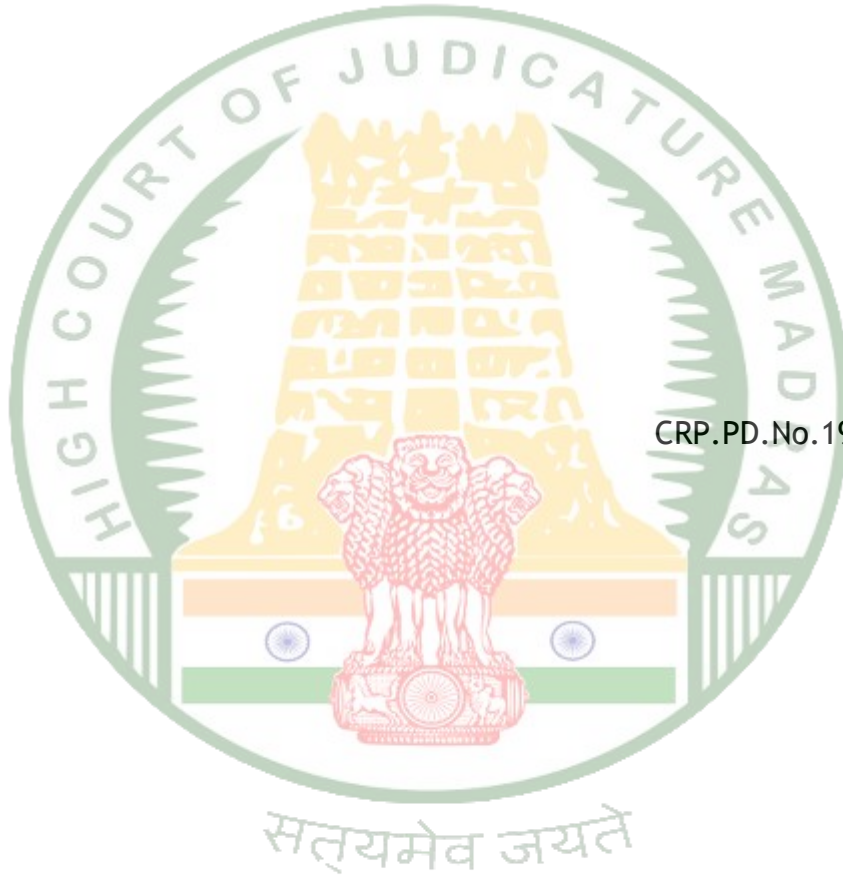
To
The District Munsif Court cum
Judicial Magistrate Court, Kodumudi.



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G.K.ILANTHIRAIYAN,J.

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